

**FILED**

MAR 24 2006

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

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER  
CONSERVATION DISTRICT,

Plaintiff,

vs.

CITY OF SANTA MARIA, ET AL.,

Defendants.

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

(CONSOLIDATED FOR ALL  
PURPOSES)

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

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

AND RELATED CROSS-ACTIONS AND  
ACTIONS CONSOLIDATED FOR ALL  
PURPOSES

**TENTATIVE DECISION RE  
TRIAL – PHASE 4**

This matter came on for further trial on February 27, 2006 on the respective cross complaints of the Land Owner Group (LOG) and the Wineman parties (collectively, the Land Owners) on the one hand and on the Public Water Producers' cross complaints on the other.

1 The Land Owners have withdrawn all causes of action except the Quiet Title causes of  
2 action. The withdrawn causes of action are therefore ordered dismissed. The Land Owner  
3 parties seek in the only remaining causes of action of their respective cross complaints to quiet  
4 title to the water rights underlying their land.

5 The Public Water Producers (referred to as the Purveyors in earlier phases of the trial),  
6 comprised of the City of Santa Maria, Golden State Water Company, Rural Water Company,  
7 Central Coast Water Authority, Oak Glen Partnership, the City of Guadalupe, the Northern  
8 Cities, and the Nipomo Community Services District, have each cross complained and seek  
9 declaratory relief in multiple causes of action. Essentially, these parties seek entitlement to  
10 water rights from the ground water basin based on prescription, return flows from imported  
11 water, water salvaged from the Twitchell Reservoir and the Lopez Reservoir, and further seek a  
12 declaration that they are entitled to water salvaged by the Twitchell Reservoir pursuant to an  
13 agreement with the Santa Maria Valley Water Conservation District (see Stipulation for Entry  
14 of Judgment entered into between the District, the Public Water Producers, and multiple other  
15 parties).

16 Pursuant to agreement between the parties, the Land Owner parties presented their  
17 evidence regarding their cross complaints to quiet title first. The parties stipulated that each of  
18 the Land Owner parties was vested in fee simple in the real property for which quiet title was  
19 sought.

#### 20 PUBLIC WATER PRODUCERS' MOTION

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

26 The motion under Code of Civil Procedure Section 631.8 deals with the central issue in  
27 the Land Owner parties' cross complaint. The evidence of legal title is undisputed based upon  
28 the parties' stipulation that title to the property in question is presently vested in the Land

1 Owner parties. The Public Water Producers claim a priority to ground water based upon  
2 prescription and other grounds. The Public Water Producers claims constitute a “rival claim” to  
3 ground water and if proven would preclude finding that the Land Owners are entitled to a  
4 priority based upon their overlying rights without a quantification of such rights.

5 The court declines to use the quiet title remedy to quiet title to the water underlying the  
6 land of the Land Owner parties at this time. Whatever water rights are appurtenant to each of  
7 the parcels owned by the members of the Land Owner parties have been shown to belong to the  
8 respective owners, as alleged, but the court at this time cannot define what those rights are  
9 since every land owner in the basin has certain correlative rights to water underlying their land  
10 except as such rights may have been eroded by prescription or otherwise. Accordingly, while  
11 there is no question as to legal title to the real property, there are allocation issues relating to  
12 the Twitchell Yield (some of which that will be considered in the next phase of the trial) as well  
13 as the prior rights of certain parties to return flows that could affect rights to use water in times  
14 of drought. To quiet title to water rights at this time without quantification would be  
15 misleading. The court will consider whether that is an appropriate remedy during the next  
16 phase of the trial but the court is of the opinion that declaratory relief is the appropriate remedy  
17 in this case.

#### 18 LAND OWNER PARTIES’ MOTION FOR JUDGMENT

19 At the close of the Public Water Producers’ case, the Land Owner parties moved for  
20 judgment on the prescriptive rights claims. The decision on the motion will be the same as the  
21 ultimate decision in this phase of the trial and there is no reason to parse it in response to the  
22 motion.

#### 23 PRESCRIPTION

24 The court in Phase Three of the Trial found that the basin was not in hydrologic  
25 overdraft, as defined. The court in that phase defined overdraft as “extractions in excess of the  
26 safe yield of water from the aquifer, which over time will lead to a depletion of the water  
27 supply within a ground water basin as manifested by a *permanent lowering of the water table*  
28 (emphasis added).” The court included all sources of water within the basin in its analysis,

1 including native ground water, so-called salvaged or developed water, imported water, and  
2 return flows from imported water. While there were clearly years in which the valley suffered  
3 drought conditions, with pumping exceeding recharge, prior to the creation of the Twitchell  
4 project, it is also clear that in following years with abundant precipitation, there was sufficient  
5 recharge to restore the water levels in the basin to historic highs even without Twitchell though  
6 there was a future risk that sufficient recharge would not continue to occur as population and  
7 agricultural use increased. To reduce that risk, the Twitchell project was developed and came  
8 on line in the 1960's. Well levels in 1952 were about the same as they were in 1929, though  
9 there were intervening years where the well level dropped significantly. Even if in some years  
10 there was greater pumping than recharge, such that water levels fell in those years and there  
11 was no surplus of water in the aquifer, the restoration of the water levels to historic highs meant  
12 that there was no *permanent lowering of water levels in the basin*. In the early 1950's, prior to  
13 construction of Twitchell, well levels were at historic highs.

14 However, absence of *permanent lowering* may not be necessary to a finding of  
15 prescriptive rights acquired during overdraft. If there is no surplus of water, and if overdraft is  
16 defined as extractions exceeding recharge such that there is serious depletion of the water  
17 supply, as defined in City of Barstow et al v. Mojave Water Agency, et al., (2000) 23 Cal. 4<sup>th</sup>  
18 1224, that may set in motion the prescriptive process. "An appropriative taking of water which  
19 is not surplus is wrongful and may ripen into a prescriptive right where the use is actual, open  
20 and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the  
21 statutory period of five years, and under claim of right." California Water Service Co. v.  
22 Edward Sidebothan & Son (1964) 224 Cal. App. 2d 715. If a riparian owner has acquired  
23 rights by prescription in times of plentiful water, and reduces pumping to conserve during times  
24 of drought, the prescriptive owner loses nothing by virtue of that reduced pumping. And, the  
25 opposite should also be true so that where an upstream owner obtains prescriptive rights during  
26 periods of drought, merely because the river may in future years have abundant water, the  
27 prescriptive owner should not lose those prescriptive rights during later years of drought  
28

1 following the years of abundance. The principles applicable to riparian rights apply by analogy  
2 to ground water rights. *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908.

3 In this case, it is clear that there were substantial periods of time extending over various  
4 periods of 5 or more continuous years between 1900 and the present time during which there  
5 was no surplus, temporary or otherwise, and the Public Purveyor parties produced water from  
6 the aquifer. Though there was ultimate recharge during abundant precipitation and run off, the  
7 periods of depletion without surplus water exceeded the period of the statute of limitations  
8 multiple times.

9 Prescription (as with any adverse possession case) requires that the taking be open and  
10 notorious, that the party against whom prescription is sought be aware of or on notice of the  
11 adverse taking, and that the water taken will permanently deprive the overlying owner of his  
12 right to use water underlying the land in some material amount. Generally, the conditions  
13 amounting to overdraft give rise to notice but notice may occur short of overdraft as defined.

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

22 If the overlying owner continues to pump and make reasonable and beneficial use of the  
23 water underlying the land at the same time that the appropriator is pumping, the overlying  
24 owner has not been permanently deprived of any water. An overlying owner preserves his  
25 rights, and limits the appropriator's ability to obtain a prescriptive acquisition of water rights as  
26 against an owner who continues to pump the full reasonable and beneficial use amounts of  
27 water in the face of an adverse appropriative use (referred to as self help). City of Los Angeles  
28

1 v. City of San Fernando (1975) 14 Cal. 3d 199; City of Pasadena v. City of Alhambra (1949)  
2 33 Cal. 2d 908.

3 There has been no evidence presented to the court that any of the Land Owner parties  
4 currently before the court or that the parties to this litigation, ceased or reduced pumping or  
5 otherwise failed to exercise overlying rights during the years when there was no surplus and  
6 when pumping may have exceeded recharge within the basin. In fact, evidence of lowering  
7 water levels in time of drought may be some evidence of exactly the opposite. There also is no  
8 evidence of the type of appropriators' mutual prescription resulting in the proportionate  
9 reduction in pumping in Pasadena v. Alhambra (supra), as it has been characterized as between  
10 appropriators in Hi-Desert County Water District v. Blue Skies Country Club (1994) 23 C.A.  
11 4<sup>th</sup> 1723.

12 However, there is clearly evidence that during these years of "no surplus," from 1957 to  
13 1967, when Twitchell began to produce an augmentation to the water in the aquifer, the Public  
14 Water Producers within the Santa Maria Valley Water Conservation District pumped regular  
15 quantities of water from the aquifer, approximately averaging as follows:

16 City of Santa Maria - 5100 acre feet a year;

17 Golden State - 1900 acre feet a year.

18 The court finds that even after the Twitchell augmentation began, there have been  
19 periods in excess of the statute of limitations during which there has been no surplus in the  
20 basin and that the Public Water Producers have continued to produce water from the aquifer. It  
21 is important for the parties who claim an undiminished right to an overlying right, or any other  
22 appropriators of water, to establish their own pumping activity during those years to avoid the  
23 implications from that appropriative use.

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

#### 26 TWITCHELL ENTITLEMENT

27 The Public Water Producers contend that the yield from Twitchell should not be  
28 included in the determination of native yield and should not be included as water within the

1 basin for purposes of determining overdraft or surplus. It is also contended that as the water  
2 has been appropriated up stream of the dam, the water cannot be considered as part of the  
3 native yield under the authority of Lindblom v. Round Valley Water Co. (1918) 178 Cal. 450.

4 The Public Water Producers, respectively, also assert a priority right to Twitchell (and  
5 Lopez Reservoir water) on the grounds that their customers paid the greatest share of the costs  
6 of both projects and on that basis contend that the Twitchell yield should not be included in the  
7 computation of native yield.

#### 8 PAYMENT FOR TWITCHELL

9 The contention that the Public Water Producers have a prior right to the Twitchell yield  
10 is based, in part, on the theory that the residents of the City of Santa Maria contributed more to  
11 its cost and that should entitle them to a fixed share of the augmented yield from that source.  
12 While all properties within the district were assessed by the district to repay the bond costs for  
13 construction of the dam, the theory is that because the residential owners are far greater in  
14 number than the land owner parties or the farmer groups, the municipal customers paid a  
15 greater share of the bonds and therefore should receive greater rights to the water. The theory  
16 would exclude from the ground water yield a portion of the Twitchell yield in determining  
17 overdraft, and would support prescription, according to this theory of entitlement.

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

22 Twitchell was created by a congressional act which authorized the U.S. Department of  
23 the Interior, Bureau of Reclamation, to seek a license from the California Department of Water  
24 Resources to construct a dam and reservoir on the Cuyama River to benefit irrigation, domestic,  
25 and salinity control uses with incidental recreational uses within the Santa Maria Valley Water  
26 Conservation District (the District is not coextensive with the valley and valley land owners  
27 outside the district also benefit when the basin is in equilibrium). The license that was issued,  
28 subject to the right of the U.S. Government to use the project for flood control and the

1 satisfaction of existing water rights, among others, was for the right of the Santa Barbara  
2 County Water Agency, on behalf of the Santa Maria Valley Water Conservation District, and  
3 its land owners, to have the perpetual right to use all the water generated by the Twitchell Dam  
4 and Reservoir. The license must be read in conjunction with 43 U.S.C. Section 372 which  
5 limits the water that is produced by the dam to be used for beneficial purposes appurtenant to  
6 land.

7 But it is also clear that California water law controls and the license creates no new  
8 water rights other than the appropriative rights granted by California law to the Secretary of the  
9 Interior subject to the conditions in the license. As a lawful appropriator the Bureau of  
10 Reclamation under the authority of the Secretary of the Interior conferred rights on the Santa  
11 Barbara County Water Agency by contract. The Santa Barbara County Water Agency then  
12 contracted with the Santa Maria Valley Water Conservation District to manage and operate the  
13 dam and the reservoir. There is no intent by the federal government to supplant state water  
14 rights law. California v. United States (1978) 438 U.S. 645; Klamath Irrigation District v.  
15 United States (2005) 67 F. Cl. 504.

16 The water that is received and held in the reservoir by the dam is water that would  
17 otherwise find its way to into the Santa Maria River and ultimately the ocean. To the point of  
18 entrapment by the dam, it is riparian water and subject to the rule of riparian rights. When the  
19 water is released it is released in amounts that will permit maximum percolation into the  
20 aquifer.

21 When the water is released, it percolates into the aquifer and all land appurtenant  
22 benefits from its use. The license was issued so that all land within the conservation district  
23 would benefit, including municipalities. The District was charged with assessing land owners,  
24 including residents within the urban areas, to repay the bonds. The valley is benefited because  
25 in addition to the normal river flow that percolates into the aquifer, the operation of the dam  
26 creates additional water to be stored and later released at times and in quantities that will  
27 increase percolation into the aquifer. Without the dam, that water would otherwise be lost to  
28 ocean outflow (the evidence indicates that the increase is approximately 32000 acre feet of

1 water a year that would otherwise flow to the ocean). Wherever a person may reside within  
2 the district - urban or rural, farmer, industrial, or city dweller, there is a material benefit derived  
3 from the increased percolated water, by way of ensuring higher levels in the wells throughout  
4 the valley, reducing the need for and cost of imported water, preventing loss of aquifer storage  
5 space, and preventing ocean and salt water intrusion into the aquifer in times of diminished  
6 precipitation and potential overdraft. That was the specific intent of the Act of Congress, the  
7 License granted to the Secretary of the Interior, and the contract that ultimately vested  
8 responsibility in the Santa Maria Valley Water Conservation District.

9 There is no prior or historic contract between the District and any land owner or  
10 municipality or public water producer within the District that would confer rights to any  
11 specific quantity of water prior to the commencement of this litigation. Each individual land  
12 owner is assessed on an equitable basis. No party can claim an allotment to a specific quantity  
13 of water based on the amount of the assessment or on any other basis than that of a holder of  
14 appurtenant rights to water within the district. There is no legal basis or authority for the City of  
15 Santa Maria to claim a prior right to use a percentage of the water from the reservoir over any  
16 other person or group of persons *merely* because its residents outnumber rural users of water.

#### 17 LOPEZ RESERVOIR AND SWP WATER IN NORTHERN CITIES AREA

18 Because the water basin in the Santa Maria Valley encompasses more than the  
19 boundaries of the conservation district, and the issues before the court also involve those other  
20 parts of the valley, it is important to set forth the rights of the other Public Water Producers  
21 with regard to the Twitchell and Lopez Reservoir water. It is noted that the Land Owner parties  
22 and the Conservation District are all upstream of the other Public Water Producer and  
23 municipal parties and they make no claims to Lopez waters or return flows from Lopez or  
24 imported water. However, the record must reflect the water rights in this section of the basin  
25 that these parties have because the basin as a whole is affected by insufficient recharge and as  
26 there is a risk of future overdraft as periods of drought occur and coincide with increased  
27 consumption.

1           The Northern Cities and San Luis Obispo County’s relationship to Lopez is similar to  
2 the Water Conservation District’s relationship to Twitchell. Here the Northern Cities and San  
3 Luis Obispo County obtained a license for the creation of the Lopez Dam, and totally funded it  
4 by assessments. The Northern Cities and San Luis Obispo County stand in the same position  
5 with regard to the water produced by the dam as the Santa Maria Water Conservation District  
6 stands to Twitchell production. The holders of the license have the right to the exclusive use of  
7 the water in accordance with the terms of the license. As with Twitchell, water is impounded  
8 and stored in the reservoir during heavy precipitation and run off so as to avoid waste to the  
9 ocean and then is released into percolation ponds during the dry months. Approximately 5200  
10 acre feet a year are piped directly to the cities and return flows are generated. Additional  
11 amounts are released into the aquifer as a result of the timed releases. 1200 acre feet are  
12 acquired annually from the State Water project, which saves pumping from the aquifer

13           The court finds that the water produced by the combination of Lopez Reservoir water,  
14 State Water Project inflows, and return flows equals approximately 7300 acre feet of water per  
15 year. That total is essentially all water to which the producers would have a prior right during  
16 times of overdraft, should that occur in the future.

#### 17           CONTRACT RIGHTS

18           The Bureau of Reclamation entered into a contract with the Santa Barbara County  
19 Water Agency which in turn entered into a contract with the Santa Maria Valley Water  
20 Conservation District to manage and operate the dam and the reservoir. The Land Owner  
21 parties have claimed a right as a third party beneficiary to those contracts but neither the land  
22 owners nor the cities are intended beneficiaries of the contracts between the Bureau of  
23 Reclamation and the water agency or the conversation district- they are incidental beneficiaries.  
24 Orff et. al. v. United States (2004) 358 F. 3d 1137. No city, land owner, public water  
25 producer, or other party has a contractual right to any water produced by Twitchell except as  
26 the District may be authorized to enter into such agreements. The water introduced into the  
27 aquifer from Twitchell is intended to benefit all who are within the conservation district.  
28 Accordingly, since there are no prior rights to the water produced by Twitchell, it must be

1 included in the basin yield in determining whether there is an overdraft that could result in the  
2 acquisition of prescriptive rights.

### 3 DEVELOPED WATER

4 The Public Water Producers contend that as to stored, appropriated water, downstream  
5 users have no rights to the water when it is released from a dam, citing Lindblom v. Round  
6 Valley Water Co.(1918) 178 Cal. 450, a California Supreme Court case. There are significant  
7 and material factual differences between this case and the Lindblom case. Lindblom involved a  
8 case where the upstream riparian owner created a dam that resulted in prescriptive rights to all  
9 the water stored. When the downstream riparian owner was deprived of flow during the  
10 summer months, he could not require the dam owner to release water that the upstream  
11 appropriator had the exclusive right to use for beneficial purposes. To the contrary, in the  
12 instant case the appropriation was authorized by the State of California so as to benefit the  
13 Santa Maria Valley Water Conservation District in its entirety- it may not have been perceived  
14 that the basin was more extensive than the district boundaries.

15 In Lindblom the appropriator was entitled to make any beneficial use of the water it  
16 chose to make of it. In this case, it must be used to benefit the Valley below by the terms of the  
17 licenses and the contracts.

18 The water from Twitchell augments the water within the basin during dry seasons. But  
19 during years when there is a surplus, all water users have the right to use the water as both  
20 overlying owners and appropriators. The water commingles with all the other water when  
21 released from the reservoir. However, during future times of shortage, if there is no surplus, or  
22 if there is an overdraft, so long as the conservation district uses the water for the general  
23 purposes in the valley, and properly exercises its police powers in that regard for the public good  
24 within the district, it may regulate and allocate the appropriated water consistent with its  
25 contract under the terms of the license.

26 The question of the actual allocation the Conservation District may make of Twitchell  
27 produced water within the basin, in drought or in flood conditions, preferring one user over  
28 another, are reserved until the next phase of the trial. In Phase 5 of the proceedings, the court

1 will entertain proposals for a physical solution to address the wide fluctuations in yield within  
2 the valley.

### 3 RETURN FLOWS

4 A party, who has a prior right to specific sources of underground water, retains that  
5 right in times of overdraft, and in periods of shortage that amount should not be spread  
6 generally among all producers within a basin to determine whether or not prescriptive rights  
7 have accrued. City of Los Angeles v. City of Glendale (1943) 23 Cal. 2d 68. Return flows  
8 from imported water fall into the category of water over which there is a prior right. City of Los  
9 Angeles v. City of San Fernando (1975) 14 Cal. 3d 199. It is undisputed that the Public Water  
10 Producers paid for and received water from the State Water Project, distributed it to their  
11 customers, recaptured it in the waste water system after initial use, and placed it in the aquifer  
12 by way of percolation ponds. The owners of those return flows are entitled to their exclusive  
13 use during periods of overdraft or in the absence of surplus underground water. Return flows  
14 cannot be counted as part of the native yield within the ground water basin when there is an  
15 overdraft or an absence of surplus but otherwise would be available for any user.

### 17 CONCLUSION

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

19 The Twitchell yield is a part of the ground water yield for purposes of determining  
20 whether the basin is in overdraft or whether there is or has been surplus water available for  
21 appropriator's use, whether it is defined as "native yield" or salvaged or developed water. No  
22 party has established any priority of rights to that current yield within the aquifer.

23 The Santa Maria Valley Water Conservation District has the authority by contract to  
24 manage and operate the dam for all the purposes set forth in its charter and the contract under  
25 which it operates, including providing water to municipalities then in existence and those to  
26 come later.

1 The Twitchell dam and reservoir are losing storage capacity due to the progressive  
2 infiltration of sediment and silt. Unless that process is reversed, the water basin is at risk of  
3 permanent overdraft.

4 The Public Water Producers have established a prior right to return flows from imported  
5 water in times of shortage. If the basin is at or above capacity, the water is available for all  
6 users.

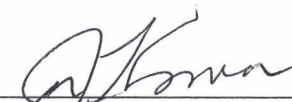
7 The Public Water Producers have established a right to ground water within the basin,  
8 as indicated: Santa Maria- 5100 acre feet a year and Golden State 1900 acre feet a year. .

9 The Public Water Producers have established a prior right to surplus water as against  
10 any subsequent appropriators.

11 The Land Owner Group parties have the right to present evidence that they have  
12 continuously pumped and fully exercised their usufructuary rights during all periods where no  
13 surplus existed.

14 The court directs the respective parties to identify the factual and legal issues that they  
15 wish to have addressed in a Statement of Decision for this phase of the trial within 10 days of  
16 the date of this tentative decision. The court may then assign the preparation of a Statement of  
17 Decision to one of the parties.

18  
19 Dated: MAR 24 2006

  
\_\_\_\_\_  
Hon. Jack Komar  
Judge of the Superior Court