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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]

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

**[PROPOSED/REVISED DRAFT] PARTIAL
STATEMENT OF DECISION**

Plaintiff Santa Maria Valley Water Conservation District seeks declaratory relief as follows:

1. A declaration that no defendant holds prescriptive rights to underground water.
2. A declaration that the Appropriators within the District (non-overlying owners) may only extract water that is surplus to the water rights of overlying owners. The court is requested to determine the aggregate amount of surplus water available for Appropriators and to make orders curtailing the taking of water from surplus if the amount of surplus water declines.

- 1 3. A declaration that defendants are not entitled to return flows from State Water Project
2 imported water.
- 3 4. A declaration that there is no right to recapture State Water Project water stored in the
4 basin through in lieu recharge.
- 5 5. A declaration that there is no right to recapture State Water Project water stored in the
6 basin through direct recharge (injection wells).
- 7 6. Injunctive relief to prevent the defendants from causing an overdraft by limiting their
8 extractions based on any future diminution of surplus.

9 Cross-complainants are as follows:

10 Apio Land Co., et al. seeks declaration of rights, quiet title and inverse condemnation.

11 Nipomo Community Services District, et al. seeks declaratory relief and a physical
12 solution to future over-pumping.

13 ConocoPhillips and Tosco Corp., et al. seek declaratory and injunctive relief and claim a
14 right to the reasonable and beneficial use of the water underlying its land.

15 Small Landowners group, et al., seeks declaratory relief and inverse condemnation.

16 Landowners Group, et al. seeks declaratory relief, quiet title and inverse condemnation.

17 Glad-A-Way Gardens, et al. seeks declaratory relief, quiet title and inverse
18 condemnation.

19 PH Property Development, et al. cross complains seeking declaratory relief and inverse
20 condemnation.

21 Rural Water Company, et al. claims prescriptive rights and a declaration of the same as
22 well as a declaration of entitlement to Twitchell water.

23 Northern Cities (Arroyo Grande, Pismo, Grover Beach, and Ocean Community Services)
24 claim prescriptive rights and also seek a physical solution.

25 The City of Santa Maria, et al. cross complains seeking declaratory and injunctive relief,
26 requesting a determination that it has obtained prescriptive rights to the Basin water on the
27 ground that the basin has been in overdraft for more than 5 years and that if pumping continues
28 at the current rate the Basin water supply will be exhausted. Santa Maria claims it has acquired

1 prescriptive rights by pumping continuously since 1900. Other causes of action relate to
2 purported municipal priority under Water Code Section 106.5. Santa Maria also seeks a remedy
3 against Santa Maria Valley Water Conservation District for failure to exercise its duty to
4 regulate water use within the Basin, to recapture its right to return flows from imported water, to
5 establish its right to Twitchell Reservoir water, for an equitable apportionment of waters in the
6 Basin, and to enjoin waste by overlying owners.

7 Southern California Water Co., et al. brings a cross-complaint for declaratory relief
8 seeking a finding that the Basin has been in overdraft for more than five years ant that it has
9 acquired prescriptive rights. It also seeks injunctive relief and a water management plan for the
10 Valley.

11 Stated in the broadest of terms, the pleadings of all parties require the court to determine
12 the rights of the parties to the use of water within the underground basin known and described as
13 the Santa Maria Valley or Santa Maria Valley groundwater basin (hereinafter referred to as the
14 “Basin”).

15 Rather than naming each of the parties and their respective positions in the discussion
16 below with regard to this phase, the court will categorize those parties seeking prescriptive
17 rights as Appropriators and will refer to the parties opposing prescription as Landowners (and
18 will include the Santa Maria Valley Water Conservation District (hereinafter “SMVWCD”) in
19 the Landowner category).

20 If an underground water basin is in overdraft, an appropriator of water may acquire
21 priority rights if all the other elements of prescription are present. If the basin is not in overdraft,
22 but no surplus exists, the court may be required to intervene to establish the rights of the parties
23 seeking to use the water within the basin, or to protect it from overuse (even by overlying
24 landowners). A determination of overdraft or its absence assists the court in determining the
25 rights to the reasonable and beneficial use of the water within the basin when there are
26 competing claims to the use of the water by land owners or appropriators, or both. Because of
27 the emphasis the parties placed on the issue of prescriptive rights, the court directed that the
28 parties present evidence on the question of whether the Basin has been in overdraft in a separate

1 early phase of the trial. The trial on that phase commenced on October 8, 2003. Appearances of
2 counsel are set forth in Attachment A hereto.

3 Oral and documentary evidence was introduced by the respective parties, and the matter
4 was argued and submitted for decision. The court, having considered the evidence, having heard
5 the arguments of counsel and being fully advised, issues the following partial statement of
6 decision based upon the evidence presented regarding the issue of Basin overdraft.

7 Summary of Decision

8 The court finds based on all the evidence presented in this phase of the trial that the
9 Basin is not presently and has not historically been in a state of hydrologic overdraft.

10 The law defines “overdraft” as extractions in excess of the *safe yield* of water from the
11 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
12 as manifested by permanent lowering of the water table. *City of Los Angeles v. City of San*
13 *Fernando* (1975) 14 Cal. 3d 199, *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d at p.
14 929, *Orange County Water District v. City of Riverside* (1959) 173 Cal. App. 2d 137. *Safe yield*
15 is the amount of annual extractions of water from the Basin equal to the amount of water needed
16 to recharge the groundwater Basin and maintain it in equilibrium, plus any temporary surplus.
17 Temporary surplus is defined as that amount of water pumped from an aquifer to make room
18 underground to store future water that would otherwise run off into the ocean or otherwise be
19 wasted. *Safe yield* cannot be determined by looking at the groundwater Basin in a single year
20 but must be determined by evaluating the Basin conditions over a sufficient period of time to
21 determine whether pumping rates will lead to eventual permanent depletion of the water supply.
22 Recharge must equal discharge over the long term. *City of Los Angeles v. City of San*
23 *Fernando*, supra, 14 Cal. 3rd at 278-279.

24 The Landowner parties have proved by a preponderance of the evidence that the Basin is
25 not, and has not been, in overdraft. The Appropriators have failed to prove by clear and
26 convincing evidence, (*see discussion infra*) or even by a preponderance of the evidence, either
27 that (1) reliable estimations of the long-term extractions from the Basin exceed reliable
28 estimations of the Basin’s safe yield, or (2) physical evidence of overdraft in the Basin permits an

1 inference that extractions have exceeded safe yield.

2 But a determination of whether or not the basin is in overdraft is only one aspect of the
3 determination of whether or not a party has acquired a priority to underground water. There are
4 more claims and contentions in this case than simply a claim of prescriptive rights. Many parties have prayed for
5 prospective injunctive relief, in the form of a physical solution or otherwise. Other parties have sought the court's
6 assistance in obtaining separate, sub-basin management of portions of the overall basin. While the evidence
7 presented during the Phase III trial is sufficient for the court to determine that the Basin has not been, and is not, in a
8 state of hydrologic overdraft, the evidence in Phase III is not sufficient for the court to resolve other issues presented
9 by various parties' declaratory and injunctive relief claims, which issues therefore must be adjudicated in further
10 phases of this litigation. The court must still determine, inter alia, whether any parties have acquired prior rights to
11 the use of water within the aquifer based upon their creation of the water supply, or assuming that there is presently
12 only a small surplus of water within the basin (even if not in overdraft), whether future rights are in jeopardy.

13 Burden of Proof

14 Overdraft within a ground water basin, if proved, is an element that may establish
15 prescriptive rights in an appropriator against an overlying owner, assuming all the other elements
16 needed to establish the claim are also proved. However, even without prior overdraft, if there is
17 no surplus and an appropriator takes water from the aquifer that an overlying water user would
18 have a prior right to use, the appropriator may acquire prescriptive rights if all the other elements
19 necessary to acquisition of the right are present.

20 While the Santa Maria Valley Water Conservation District is the Plaintiff in this case and
21 accordingly has the burden of proof on all issues raised by the complaint, the Appropriators bear
22 the burden of prove of all the elements of their prescriptive claims. The case law consistently
23 places the burden of proof upon the proponent of an adverse possession claim. (See, e.g., Field-
24 Escandon v. DeMann (1988) 204 Cal.App.3d 228, 235.) Cases involving prescriptive water-right
25 claims are particularly clear in this regard, holding that the proponent bears the burden
26 irrespective of whether prescription is asserted by the plaintiff in the complaint or by the
27 defendant in a responsive pleading. (Morgan v. Walker (1933) 217 Cal. 607, 608, 615 (plaintiff
28 asserting prescriptive right); Central and West Basin Water Replenishment Dist. v. Southern Cal.

1 Water Co. (2003) 109 Cal.App.4th 891, 909 (defendant asserting prescriptive right); Pleasant
2 Valley Canal Co. v. Borrer (1998) 61 Cal.App.4th 742, 784 (defendant asserting prescriptive
3 right); Hahn v. Curtis (1946) 73 Cal.App.2d 382, 388–89 (defendant asserting prescriptive right).

4 Demonstrating adversity requires proving that the claimant’s water use deprives a senior
5 right holder of water: “A use is not adverse unless it deprives the owner of water to which he or
6 she is entitled.” (City of Los Angeles v. City of San Fernando, supra, 14 Cal.3d 199, 281-282.)
7 (citing City of Pasadena v. City of Alhambra (1949) 33 Cal.2d 908, 927)); (City of Barstow v.
8 Mojave Water Agency (2000) 23 Cal.4th 1224, 1241 (“an appropriative taking of water which is
9 not surplus is wrongful and may ripen into a prescriptive right”).

10 In attempting to gain prescriptive rights in the Basin, the Appropriators must do more than
11 meet the usual ‘preponderance of the evidence’ standard that applies in most civil cases.

12 Prescription claims must be proved by clear and convincing evidence. (Weller v. Chavarria
13 (1965) 233 Cal. App. 2d 234; Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 235;
14 Applegate v. Ota (1983) 146 Cal.App.3d 702, 708.)

15 Nature of the Evidence for Determining Overdraft

16 The Appropriators themselves selected the methods and the evidence whereby they
17 attempted to prove overdraft. The court did not define overdraft or attempt to limit the
18 introduction of evidence to any particular definition or scientific or legal approach to the issue,
19 but rather indicated to all the parties that it would base a definition on the various decisions of the
20 California Supreme Court and appellate courts that have considered the issue of overdraft.

21 For the reasons detailed below, Appropriators have not established by any standard of
22 proof either the Basin’s safe yield or that long-term extractions from the Basin have exceeded any
23 such safe yield so as to manifest overdraft conditions.. The court is satisfied both from the law
24 and the evidence that overdraft can be determined, for purposes of resolving the Appropriators’
25 prescriptive-right claims, by evidence of observed physical conditions in the Basin, such as
26 declining underground water levels, seawater intrusion, declining water quality, or land
27 subsidence over time and by the testimony of expert witnesses who have testified as to the
28 conditions within the basin.

1 The court is persuaded that evidence of such undesirable results, or in this case the entire
2 absence of such undesirable results, along with credible evidence of stable or surplus conditions,
3 is sufficient to establish that the Basin is not in overdraft. With regard to the nature of the
4 evidence offered at trial, none of the several hydrogeology experts who testified disputed that
5 physical conditions such as those noted above are the type of “undesirable results” of excessive
6 extractions from a groundwater supply that indicate a condition of overdraft. In fact, each expert,
7 whatever his or her party affiliation, devoted a substantial amount of testimony to the asserted
8 presence or absence of just such conditions. It is clear from the evidence that experts in the field
9 of hydrogeology can and routinely do base their conclusions concerning groundwater basins,
10 including the presence or absence of overdraft, on physical evidence of long-term lowering of
11 groundwater levels, seawater intrusion, land subsidence and the like.

12 Moreover, there is no evidence that recent changes in use in the Basin have so altered the
13 patterns of recharge and water use that the Basin has recently become in a state of overdraft but
14 that the undesirable results of this condition have not yet manifested themselves. Experts for the
15 appropriators have testified that in their opinions the basin has been in overdraft for most of the
16 last half century based solely on estimates of extraction and recharge of water. That opinion is
17 not supported by the physical evidence. If the Basin had been in overdraft for the last fifty-three
18 years, one would expect to see evidence of the consequences of such overdraft of such a long
19 duration. In these circumstances, evidence of the Basin’s physical condition is sufficient to
20 resolve whether or not the long-term historical condition of the Basin supports the Appropriators’
21 claims of overdraft.

22 Appropriators’ Argument Concerning Calculation of Overdraft

23 The Appropriators have contended the absence of negative physical conditions in a Basin
24 is never sufficient to determine whether the Basin is overdrafted. On a single year basis, the
25 court would agree with that proposition. But, when the physical conditions have remained
26 essentially static in excess of fifty years, following consistent patterns of discharge and recharge,
27 the court is satisfied it can draw conclusions about overdraft.

28 Appropriators contend that it is impossible to make any determination whatsoever

1 regarding overdraft for any purpose, in any factual setting, without a numerical determination of
2 safe yield. Prescriptive-right claims to underground water turn on whether the claimants'
3 invasion of his or her rights was adverse and thus may be determined based on what conditions
4 property owners can observe or what knowledge they may have. In this case, that might mean
5 whether or not the Basin's physical condition demonstrated that the pumping of others was
6 depriving Landowners of water. The court rejects the Appropriators' contention that it is
7 impossible to make any determination of overdraft for any purpose without the Landowners
8 proving the amounts and the reasonableness of their groundwater pumping, and thus quantifying
9 one portion of the demands on the Basin. That argument incorrectly suggests that the
10 Landowners must prove their affirmative defense of self-help (*City of Barstow v. Mojave Water*
11 *Agency* (2000) 23 Cal. 4th 1224, 1241, 1253) before the Appropriators prove any element of their
12 prescriptive claims. Moreover, as discussed below, even if it were necessary to quantify safe
13 yield in order to determine the issues presented for trial in this phase of the case, the
14 Appropriators failed to meet their burden of proof on this issue with credible evidence.

15 Landowners presented credible evidence of a water budget confirmed by an independent
16 change in storage calculation. This budget showed a modest surplus in supply over a reasonable
17 base period, and was further supported by a peer review.

18 However, the fact that the court can resolve the Appropriators' prescriptive-right claims
19 based on overdraft without calculating the Basin's safe yield does not make such a calculation
20 irrelevant to future phases of this case. The parties have requested relief the determination of
21 which lies beyond the Phase III issues and requires additional phases of trial. Moreover, the court
22 recognizes that it may have an independent duty in the future to consider a physical solution in
23 some circumstances. See *City of Lodi v. East Bay Municipal Utility Dist.* (1936) 7 Cal.2d 316,
24 339-341.)

25 While there may not be current manifestations of overdraft, it is possible, given
26 population growth, agricultural and industrial changes, that the Valley is at risk of being in
27 overdraft in the future. During the entire historical period presented populations increased within
28 the Valley and water use changed in a variety of ways. There has been a shift in some areas to

1 urban uses and away from agriculture. The nature of the agricultural uses has changed as well.
2 The type of irrigation used by farmers has become more efficient and less water is needed with
3 more efficient uses of water. But there has also been an increase in agriculture in the Valley in
4 substantial numbers. More of such changes will occur and it is important to both present
5 generations as well as future generations that the water resources within the Basin be managed
6 prudently. Absent actual physical evidence of overdraft, a determination of safe yield is the sine
7 qua non to the court determining whether future extractions from the Basin exceed safe levels
8 either annually or over the long-term; without establishing the “bench mark” of safe yield the
9 court could not fashion the relief the parties seek in future phases of this case or fully adjudicate
10 their rights inter se, nor could the court be confident of the proper management of the Basin in the
11 future, upon which the value of any such rights directly depends. All of these things are
12 important reasons for the court to determine the safe yield of the Basin.

13 The Appropriators also contend that some sources of recharge should be excluded from
14 the Basin’s safe yield. Except for the determination of how dependable a source might be,¹ the
15 source of water recharging a basin should not generally be material to a determination of
16 whether the Basin is in hydrologic overdraft. If the court were to exclude Twitchell, Lopez, and
17 the California Water Project imported water in determining whether there is an overdraft, the
18 court would be looking at the Basin in a hypothetical sense² as opposed to whether there has
19 been real depletion of the water supply in the Basin. Because prescriptive-right claims turn on
20 the assertion that a Landowner should have known that the claimant was improperly interfering
21 with the Landowners’ rights, it is the physical reality that the Landowner can observe that is key
22 to determining whether the facts show that prescription has occurred. Landowners cite City of
23 Los Angeles v. the City of San Fernando (1975) 14 Cal. 3d 199, in support of their position that
24 all sources of supply count in the assessment of overdraft. The finding by the trial court in that
25 case was based upon a referee’s finding of fact and the parties conceded the overdraft finding.

26 ¹ *Allen v. California Water and Telephone Co.*, (1946) 29 Cal. 2d 466.

27 ² Hypothetical overdraft (or, as counsel for the City of Santa Maria contends, “legal overdraft”) may have no
28 relevance for purposes of determining prescriptive rights because hypothetical overdraft may not give notice of an
open, notorious and hostile taking of water whose use belongs to another.

1 The issues on appeal related to the allocation of water within the basin. It was clear there was
2 an overdraft, with or without non-native water.

3 On the other hand, in *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, the
4 California Supreme Court addressed a situation in which a varying supply to the Tia Juana River
5 watershed required the ongoing monitoring of a small amount of supply from a dam on the
6 Mexico side of the border to determine the safe yield and any surplus that might be available for
7 appropriation. In enumerating the factors to be considered in computing net safe yield, the
8 Court's decision plainly contemplates the inclusion of this developed supply along with other
9 sources. *Id.* at 476.

10 Ultimately, if a municipality is entitled to a priority in using water from particular sources
11 that is stored in the Basin, that priority is preserved irrespective of whether the court considers it
12 in determining whether or not there is an overdraft. Similarly, if there is an overdraft in the
13 Basin, prescriptive rights would be determined based on all water, and except for the immunity
14 against prescriptive loss of water rights granted by statute to public entities,³ all of the water in
15 the Basin would be subject to both prioritization and determination of both prescriptive and *other*
16 rights.

17 Moreover, as with the question of analyzing Basin conditions, the technical evidence
18 introduced in this case supports a determination that all sources of supply should be taken into
19 account for purposes of analyzing overdraft. Evidence was presented that engineers who engage
20 in such analyses routinely include all sources of supply; this evidence was not contradicted.
21 While the methods of engineers do not bind the court, no legal or practical obstacle has been
22 shown that prevents accepting these methods for purposes of determining the issues in this phase.
23 The court finds in this instance that overdraft must be analyzed by taking into account all sources
24 of supply to the Basin.

25 The Appropriators also contend that Twitchell Reservoir water is not a reliable source of
26 recharge to the Basin because of sedimentation that potentially reduces the water conservation
27 pool within the reservoir, and which will further reduce capacity over time. As that capacity is

28 ³ Civil Code Section 1007.

1 reduced, the amount of water available for recharge into the Basin would also be reduced.

2 The court finds that the Twitchell Reservoir has been a reliable source of water in the past.
3 The governing body for the reservoir, SMVWCD, has demonstrated that it is aware of the
4 sedimentation problem and, as it has in the past, is taking steps to mitigate the situation so that
5 Twitchell will continue to be a source of recharge to the Basin. The court need not make a final
6 determination of what role Twitchell may play in a subsequent allocation of the waters of the
7 Basin until future phases of this proceeding.

8 Appropriators' Expert Evidence

9 The Appropriators' experts have provided opinion testimony of what constitutes safe
10 yield for purposes of determining overdraft. Mr. Foreman opined that safe yield is
11 approximately 136,000 plus acre-feet per year based upon the so-called unimpaired conditions,
12 that is, without Twitchell, Lopez or imported water and based upon the so-called impaired or
13 historical conditions, his opinion is that safe yield is 149,000 plus acre-feet per year. Under
14 either scenario, Mr. Foreman opined that pumping had exceeded those safe yield estimates, and
15 thus concluded that the Basin is and has been in overdraft for many years.

16 Mr. Foreman in-put his associates' discharge and recharge estimates into the Modflow
17 computer groundwater flow model and used the model to determine recharge from the northern
18 boundaries and outflow to the ocean. He further testified that he calibrated the model and that it
19 validated his opinions.

20 But as the subsequent testimony of Dr. Dennis Williams established,⁴ the computer
21 model must achieve internal convergence as to each cell in the model. Only after convergence
22 has been established, may it then be calibrated by measuring its output against known data and
23 making adjustments to the data. A model that does not converge, therefore, cannot be calibrated
24 and completely lacks credibility.

25 Recalled to testify in January, Mr. Foreman testified that using Surfact in January he was
26 successful in obtaining convergence but that he was still unable to achieve convergence using

27 _____
28 ⁴ Dr. Williams initially testified to Mr. Foreman's August model and later testified similarly as to each model that Mr. Foreman subsequently prepared, including his January 2004 model.

1 the Modflow model. It was his opinion that he did not need Modflow convergence so long as he
2 had Surfact convergence. However, as Dr. Williams’s testimony established, and which the
3 court finds credible, convergence with Surfact is only valid if convergence is also obtained
4 inputting the same data used in Surfact into the Modflow model. That did not occur.

5 To the extent that the information put into the model is only an estimate, the
6 conclusions reached by the model are also only estimates with a substantial margin of error. To
7 the extent that the model validates the estimates, they nevertheless remain estimates. To the
8 extent that the model does not achieve convergence it cannot be calibrated and an uncalibrated
9 model lacks credibility.

10 Even setting aside the problems with model convergence, however, the models Mr.
11 Foreman offered did not accurately simulate observed conditions. Significant calibration
12 problems were observed related to the inconsistency in the model’s simulation of Basin geology
13 compared to actual, observed geologic properties. Landowners’ experts also testified as to
14 unrealistic simulations of observed water levels, especially coastal water levels, which call into
15 question the ability of the Appropriators’ models to accurately represent observed condition s.

16 Finally, Mr. Foreman’s groundwater models, as noted above, provided important in -put
17 to his water budget. By his own testimony, Mr. Foreman relied upon the models to corroborate
18 his water budget. However, Mr. Foreman could not corroborate with real water level data either
19 his model’s, or his water budget’s determination that pumping had exceeded his safe yield
20 values for his selected base period. Significantly, his water budget was not properly compared
21 to a calculation of the Basin’s change in stor age over the time period encompassed by the water
22 budget. Instead, Mr. Foreman relied on his model for this purpose. However, as noted above,
23 an uncalibrated model lacks credibility.

24 The court is not persuaded by clear and convincing evidence that the Basin historically
25 was or is in overdraft. If the court were to apply a lesser standard of proof by a preponderance
26 of the evidence, the decision would be the same.

27 Landowners’ Expert Evidence

28

1 The court is persuaded by a preponderance of the evidence presented by Landowners
2 that, based on all sources of ground water recharge, the Basin is not presently in a state of
3 overdraft, nor has it been historically. Evidence presented by the Landowners is that well levels
4 are at near or above historical highs following precipitation. None of the indicators of overdraft
5 are present.

6 Water levels in the aquifer have fluctuated greatly since recorded rainfall and well data
7 have been kept. But there has been no permanent loss of storage in the aquifer and the water
8 levels in the Basin as a whole, while falling during dry periods, rebound during wet periods. A
9 normal cycle in the Valley consists of extended periods of dry years followed by an abundance
10 of precipitation that brings water levels back to historically high levels. Water levels, quite
11 naturally, fluctuate among the various areas within the Valley as does precipitation and
12 pumping.

13 If the Basin had been in overdraft for the last fifty-three years, one would expect to see
14 evidence of the consequences of such overdraft of such a long duration. All the physical
15 evidence is to the contrary. Monitoring wells reflect no serious depletion or lowering of water
16 levels, other wells in the Valley are at normal levels, water quality remains good, and there is no
17 evidence of subsidence. No evidence of seawater intrusion, land subsidence, or water quality
18 deterioration that would be evidence of overdraft has been presented. Some wells in the
19 Nipomo Mesa area do show lowering of water levels that may result from a pumping depression
20 or other cause, and there may be some effects in that portion of the Basin that are not shared
21 Basin-wide, but that is not sufficient in any event to demonstrate Basin-wide overdraft.

22 Furthermore, as noted above, Landowners also presented credible evidences of a water
23 budget-confirmed independent change in storage calculation that showed a modest surplus in
24 supply over a reasonable base period. The court therefore concludes based on all the evidence
25 that the Basin is not, and has not been, in overdraft. This conclusion disposes of the
26 Appropriators' prescriptive -right claims based on a condition of overdraft. While actual physical
27 evidence of overdraft is not necessary to a finding that there is overdraft in the Basin, such
28 evidence may have provided some element of credibility to the Appropriators' "water budget"

1 analysis; however, none was presented.

2 Sub-Areas

3 Some of the Appropriators presented evidence in order to obtain a finding from the court
4 that certain areas of the Basin should be considered to be sub-basins or sub-areas for purposes of
5 determining the issues in this phase of the case. In particular, Nipomo Community Services
6 District presented evidence asserting that the Nipomo Mesa area should be considered a sub-basin
7 and that that sub-basin is overdrafted.

8 The court finds that these Appropriators did not establish by credible evidence, under any
9 standard of proof, that sub-basins or sub-areas were in a condition of overdraft. The court does
10 affirm its previous finding that the Basin is a single hydrogeologic unit for purposes of the
11 determinations of overdraft in this phase of the case. The court reserves any decision on how the
12 basin should be managed, including whether there should be sub basin management, to
13 subsequent phases of the trial.

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15 DATED: _____

16 HON. JACK KOMAR
17 Judge of the Superior Court
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