

09/03/08 WRAC Update: Future hearings

Hearing on September 5th 2008:

NCSD/GSWC requesting “court approval” of the settlement NMMA “monitoring plan”

Question of the **meaning of the 8/3/05 “approval”** of the settlement by the judge

Is it approval of the **content** as interpreted by NCSD as NCSD promotes?

Or it approval of the **replacement of the lawsuits with the settlement** with no approval of the effect of any aspect of the settlement?

Question of the **application of the settlement**

Does the **settlement define the rights of the settlers** as NCSD and purveyors have requested?

Or does the settlement add additional obligations to the settling parties on top and in addition to of the common law which defines everyone’s rights?

Question of the **Scope of the “monitoring”**

Does the settlement and NMMA process effect the Non-settling parties as NCSD promotes?

Or does it not affect the non-settling parties in any way?

Question of **how involved can the court be with the ongoing settlement process**

Has/Can the court **“Direct” the TMA/NMMA committees** as Bruce Buel states?

Or must the court have a properly pleaded dispute between settling parties and then an evidentiary hearing on the settlement to make any decision?

If the court can/does consider/approve a monitoring plan what’s the standard, who does it apply to?

Is it an **arbitrary “trigger point” made up by a committee** as NCSD has requested?

Or does the court have to use the legal standard of overdraft?

New request for “overdraft” hearing on November 4th 2008:

The landowners have requested new hearing to set a “Overdraft” hearing, which could become a “purveyor proof of surplus to pump” hearing or a an order for protection of landowners or an order that all pumping must be lawful or an order the TMA/NMMA use the legal standard and purveyors report the basin status in early 2009 or declare the court does not have jurisdiction so landowners can file in a different court, moving papers are on the court web site www.sccomplex.org.

PUC rate increase for settlement and PUC approval of settlement status:

Extension of 2006 hearing process was denied with out approval of the settlement or funding.

No new hearing has been applied for to date at [http://docs.cpuc.ca.gov/published/proceedings/docket flash.htm](http://docs.cpuc.ca.gov/published/proceedings/docket_flash.htm)

6/30/05 settlement page 32:

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

TMA Meetings started, not on schedule per settlement as funding questions remain.

Funding for the TMA work is in question because of GSWC’s failure to request approval for their share.

Appeal status:

Progress of the Appeal of the prescriptive ruling, paperwork and transcripts still being prepared by the Supreme Court to be transferred to the applet court before briefing, the expected **completion date is unknown.**

09/03/08 WRAC Update: NCS D – Santa Maria Pipe line project, By the numbers:

Update on last meetings unannounced payment of \$100,000,000 to Santa Maria

On July 18th 2008 Ed Eby announced the following numbers:

3000 AF/Y 30 year term \$1,200/AF

Which when multiplied come to and unannounced payment to Santa Maria of **\$108,000,000**

Update on the source of actual water:

The above numbers of course are estimates because NCS D does not have the actual final agreement yet with Santa Maria. How ever at the 6/13/08 hearing NCS D attorneys let it known what the actual water that can be acquired by NCS D is along with it's nature and reliability:

“MR. MARKMAN: WELL, HAVING SAID THAT I -- THE OTHER -- THE OTHER INTEREST WE HAVE, OF COURSE, IS WE (page 42) ARE -- NOT ONLY DID WE WANT TO IMPOSE THIS MANAGEMENT PLAN. WE WANTED TO TAKE THE RESPONSIBILITY TO MAKE IT WORK OURSELVES BY BRINGING WATER FROM ANOTHER SOURCE SO THAT SOME OF THIS PRODUCTION WHICH YOU HEARD ABOUT TODAY IN A PRESCRIPTIVE TONE COULD BE -- COULD BE CURTAILED. AND WE ARE STILL ATTEMPTING TO DO THAT AND WE'RE COMFORTABLE THAT SOONER OR LATER THAT'S GOING TO BE DONE SOONER RATHER THAN LATER, AND PAY THE COSTS OF IT. NOW, THAT WATER FROM SANTA MARIA, THROUGH THEIR SUPPLY, **THE ONLY WATER THEY CAN SELL US TO BE TRUTHFUL TO THE COURT IS THE -- SOME PART OF THE STATE PROJECT WATER RETURN FLOWS THAT THEY PUMP.**

THAT'S BECAUSE THE TWITCHELL WATER HAS A PRESCRIBED PLACE OF USE WHICH UNFORTUNATELY DOESN'T INCLUDE OUR SERVICE AREA AND IT'S BECAUSE THE PORTION OF THE NATURAL SAFE YIELD THEY CAN PUMP PRESUMABLY IS USABLE ONLY IN THE VALLEY SUBAREA.”

Another unannounced number the total cost of the pipeline of \$33,000,000

The old \$24,000,000 pipeline from 2006 had a capacity of about 6200 AF/Year, about 2500 AF/Year for past will serves issued with out water to back them and 3700 AF/Year for new development of which about 3,200 AF/Year was to be for and paid for by new development and annexations outside the NCS D.

The announced \$17,000,000 for the 2008 pipeline project is only for a capacity of 3000 AF/Year and does not include the capacity needed to enable development outside the NCS D to meet the county supplemental water requirements. **Mike Winn announced the cost of that additional 3200 AF/Year will be an additional \$16,000,000** at the BOS meeting on toilet reto fits 06/10/08.

Using addition of the 17M + 16M that brings the unannounced total pipe line cost to \$33,000,000

A has been a major Shift in the nature of the project

The other shift is that in 2006 the pipeline **was** described as “**the solution** to Nipomo’s water” and **now** the **pipeline is** being referred to as “**a Temporary Solution**” or an “Interim Solution” until desal.

Study estimated Sub-surface flows numbers have change by a factor of about 50

Ed Eby also announced the “safe yield” of the “Nipomo area” was about 6000 AF/Year that was based on studies that relied on trial sub-surface flows, but Current studies now show Sub-Surface flows are now about 50 times the numbers used as for evidence at trial, (400 AF/Y gain vs 20,000 AF/6months loss). That questions the practical benefit of bring in additional water.

So there is considerable **question in spending a total of ¼ of a billion dollars** with the efficacy of the project in both legal and practical grounds being in question.

I think this committee should take a close look at its past and recommendations to the board requiring the rest of Nipomo to pay for the second half (3200 AF/Year) with a 30year cost that is now an additional \$124,000,000 for additional supplemental water.