

Santa Maria Groundwater WRAC update for 9/2/09

Appeal Status:

All post trial decision on the settlement process by the court have been appealed. The exhibits from the trial have been moved. But the appeal process is still waiting for other paper work to be moved to the higher court.

A Writ of Supersedeas was filled and denied.

Document Title: "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; Exhibits"
Parties: Landowner Group Parties (LOG, Submit Date: 07/23/2009
<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=W30846810F32>

Document Title: "Supplement to Petition for Writ of Supersedeas "
Parties: Landowner Group Parties (LOG, Submit Date: 08/06/2009
<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=K8B07501C3B9>

Document Title: "Opposition to Petition for Writs of Supersedeas "
Parties: Nipomo Community Services District, Submit Date: 08/07/2009
<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=X336F5DB7218>

Document Title: "Application to Submit Reply Brief "
Parties: Landowner Group Parties (LOG), Submit Date: 08/27/2009
<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=YD8CA8ED12CC>

Status as of 9/1/09: Petition summarily denied by order

Purveyors were put on notice that the Stipulations "ownership" of "Twitchell Yeild" will be contested in the appeal:

Petition Page 5:

Notwithstanding the stay on appeal, the Stipulation created Twitchell Management Authority, a non public entity; is proceeding to create and implement the Management Program and to unlawfully divide up rights to the Twitchell Yield. In furtherance of the program to convey rights to Twitchell Yield, on June 2, 2009, the TMA sent correspondence to Stipulating Landowners requesting financial contribution from such landowners in exchange for rights to Twitchell Yield pursuant to the Settlement Agreement. The TMA set a meeting to discuss the Management Plan and to advise that it soon would have "a system in place for transferring shares of Twitchell Yield."

Page 18: Respondents claimed rights to water from the Twitchell reservoir in the lower court. The court ruled that the Respondents proved no priority rights to such waters, stating:

"No Party established a pre-Stipulation priority right to any portion of that increment of augmented groundwater supply within the Basin that derives from the Twitchell Project's operation." (Judgment 5:6-8 (Case No. H032750, Supp. C.T., pg. 5) (Emphasis added.)

The Court's Partial Statement of Decision Re Trial Phase 4 provides more detail stating:

"The fact that any land owner, municipal or otherwise, was specially assessed with the costs of constructing and maintaining the Twitchell project does not confer a vested right or ownership

interest in the improvement or entitle the land owner to a certain allocation of the improvement itself. (Kalashian v. County of Fresno (1973) 35 Cal.App.3d 429,433.)

Respondents contend this language gives them a post stipulation right to all water from Twitchell reservoir. See Exhibit A, Infra, page 3. **Appellants disagree and have appealed the Judgment.** As the lower court correctly explained:

"Further, there is no prior or historic contract between the District and any land owner or municipality or public water producer within the District that would confer rights to any specific quantity of water prior to the commencement of this litigation. Each individual land owner is assessed on an equitable basis. No party can claim an entitlement to a specific quantity of water based on the amount of the assessment." (Partial Statement of Decision Re Trial Phase 4, Page 19, lines 11 to 14.)

There were several new admissions by the purveyors.

In the past purveyors have stated that the settlement and it's implementation was "court ordered" or "required by the court" or "directed by the court" but now the purveyors admit that the settlement is "voluntary"

Purveyor Response page 4:

The Judgment contains a **voluntary**, court-approved stipulation made by numerous parties who agreed to spend their time and financial resources to generate and implement a management plan for the three distinct management subareas of the Basin (referred to in the stipulation as the Physical Solution). Rs 10-47.

There has been confusion about the Judgment section on Monitoring, Purveyors previously stated that not stipulating landowners would have to comply with the Technical committees and provisions of the settlement based on the Judgment. Now the only requirement is to provide data.

Purveyor Response page 5:

Petitioners are not parties to the stipulation and have **no obligation there under except potentially to provide data concerning their water production** to the three technical committees for use in the monitoring of Basin conditions. They cannot be assessed and their water production cannot be impeded by the operation of the stipulation no matter how far well elevations drop, no matter how great the threat of sea water intruding into the Basin and no matter how Basin conditions may deteriorate in any other way. In that regard, the Judgment provides in pertinent part:

"5. The Groundwater Monitoring Provisions and Management Area Monitoring Programs contained in the Stipulation ... are independently adopted by the court as necessary to manage water production in the basin and are incorporated herein and made terms of this Judgment. The Non-stipulating Parties shall participate in and be bound by, the applicable Management Area Monitoring Program. Each NonStipulating Party also shall monitor their water production, maintain records thereof and make the data available to the court or its designee as may be required by subsequent order of the court." Rs 4-5.