

11/6/13 WRAC Santa Maria Groundwater update, John Snyder
Report on the Superior court Hearing from 10/18/13

Hearing, Part 1 was the Settlement, The court is not protecting the basin from overdraft through the settlement process:

“Overdraft” is not a word in the settlement.

No action can be taken in the main part of the basin if it is a result of drought.

Stipulation (June 30, 2005 Version

2. Severe Water Shortage Conditions and Response.

(a) Determination. Severe Water Shortage Conditions shall be found to exist when the Management Area Engineer, based on the results of the ongoing Monitoring Program, finds the following: 1) groundwater levels in the Management Area are in a condition of chronic decline over a period of not less than five Years; 2) **the groundwater decline has not been caused by drought**; 3) there has been a material increase in Groundwater use during the five-Year period; and 4) monitoring wells indicate that groundwater levels in the Santa Maria Valley Management Area are below the lowest recorded levels.

<http://www.sccomplex.org/cases/noticelink.jsp?FormCaseId=VAE2661C98F&FormDocId=G8CFC6FF9446>

No one objecting to the TMA report being placed in a box at the court house, so the court accepted that it be put in a box.

The Nipomo and Northern cities reports were unread and put in a box by the clerk.

Hearing, Part 2 was the on going litigation, to protect the basin from overdraft, modifying the “not yet final” Judgment:

Review by the Supreme Court of the United States was denied.

So the Appellate Decision to “reverse” the Judgment stands:

<http://www.courts.ca.gov/opinions/documents/H032750.PDF>

As reported last year, The Appellate Court Reversed denial of Landowners request for Quiet Title to superior Overlying right:

“The judgment is reversed. The matter is remanded to the trial court with instructions to modify the judgment as follows:

As to of those appellants that pleaded quiet title causes of action, the court shall declare their overlying rights to native groundwater prior to the rights of all appropriators less the amount to which the City of Santa Maria and Golden State Water Company are entitled pursuant to their prescriptive rights”

Purveyors claim that the landowners had “alleged rights” or “no rights” has been reversed to landowners having superior rights to purveyors.

Purveyors claim that Quiet Title would not protect Landowners future rights has been reversed to Landowners superior flexible overlying rights being protected in the future.

The Appellate Court Reversed “Twitchell Yield” from settlement of 32,000 AFY to the actual amount:

“As to respondents’ rights to groundwater added to the Basin by operation of the Twitchell project (the Twitchell Yield), the trial court shall modify the judgment to clarify that such rights shall not invade appellants’ overlying rights.”

Note: Phase 3 decision points to evidence of an total average number like 12000 AFY, in some years the number is much larger and in dry years it will be much lower.

So after the successful appeal of two critical sections of the judgment, The judgment is now back in the superior court to be modified. The two sides have a strong disagreement as to what modification is needed.

A briefing schedule was set December 7th arguments due, January 10th replies due and a hearing is set on January 17th 2014.

A second result of ongoing appeal/litigation is the basin is still protected from Overdraft:

There was talk about the on going appeals being “frivolous”

Which it would be for settling parties, because settling parties can not ask the court to limit other settling parties pumping to prevent overdraft.

But for litigating parties, NCSD’s complaint was for “Prescription” which is just a legal term for saying “We don’t have to follow the law anymore because you did not sue”

With the settlement not protecting the basin from overdraft, the appeal in the US court counts as the NCSD “requested” “suing” once a year”

Because of the ongoing litigation, If the basin becomes overdrafted purveyors will still have to abide by the legal limits to pumping.

So in the big picture it may not be so much about if the appeal review is approved or denied as it is about satisfying NCSD’s “request” that landowners sue every year to protect the basin from overdraft.

John Snyder