SLIDES: California Groundwater Management

Michael Fife

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California Groundwater Management

Michael Fife
HATCH & PARENT
June 17, 2004
REVIEW OF THE LAWS ESTABLISHING THE
SWRCB’S PERMITTING AUTHORITY OVER
APPROPRIATIONS OF GROUNDWATER CLASSIFIED
AS SUBTERRANEAN STREAMS AND THE SWRCB’S
IMPLEMENTATION OF THOSE LAWS.

SWRCB No. 0-076-300-0

Joseph L. Sax
Project Director

FINAL REPORT

JANUARY 19, 2002
suggest an alternate approach, a three-point strategy for dealing with the problem of groundwater/surface water management in California:

(1) Adoption by the Board of clear criteria to implement the existing statutory purpose, by taking jurisdiction henceforth over groundwater uses that diminish appreciably and directly the flow of a surface stream; and

(2) Proactive use by the Board of its authority under Water Code § 275 and any other sources of jurisdiction it has, to implement the constitutional prohibitions on waste, unreasonable use, and unreasonable methods of use; to protect the public trust; and to safeguard established rights in surface stream flows; and

(3) Where serious basin-wide problems are presented, comprehensive basin management (as with the most successful adjudicated/managed Southern California basins) is the most promising tool to achieve genuine integration of surface water and groundwater administration in California. This suggestion is made in full recognition of the cost, duration and complexity usually associated with settling rights generally within a basin. Nonetheless, that approach seems the most promising way for this state to position itself to address contemporary issues. Unlike proposals for expanding regulatory jurisdiction, basin management offers the possibility of employing the full range of needed management tools, such as professional administration, pumping assessments, importation of new supplies, replenishment programs, achievement of sustainable use, allocation of groundwater storage capacity, quality control, and conjunctive use.

-end of report-

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307 A task that has not been made easier by the recent decision in City of Barstow v. Mojave Water Agency, 23 Cal.4th 1224, 1240, 5 P.3d 853, 863, 99 Cal.Rptr. 294, 304 (2000).
## Adjudicated Basins and Watermasters in California

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<td>1961</td>
<td>Dept. of Water Resources -- Southern District</td>
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Information from other more recent sources added.

## Indication

One groundwater basins in California, land owners or other parties have turned to the courts to settle disputes over how much groundwater can rightfully be extracted. The courts have then determined suitable distribution of water that will be available for extraction each year. In these adjudicated groundwater basins, the courts typically appoint a Watermaster to administer the court judgment.
Locations of Adjudicated Groundwater Basins in California.
Santa Maria Basin Adjudication

- Currently over 1000 parties
- Phase III Statement of Decision entered May 4, 2004
- Primary issue of Phase III was existence of overdraft
Statement of Decision

• “The law defines ‘overdraft’ as extractions in excess of safe yield . . .” (4:10-11)

• “The Court finds based on all the evidence presented in this phase of the trial that the Basin is not presently and has not historically been in a state of hydrologic overdraft.” (4:8-9)
Statement of Decision

- Court did not quantify safe yield
- Decision rests on absence of “undesirable results”
- “If the court were to exclude . . . the California Water Project imported water in determining whether there is overdraft, the court would be looking at the Basin in a hypothetical sense as opposed to whether there has been real depletion of the water supply in the Basin.” (9:18-21)
Phase IV

• “But a determination of whether or not the basin is in overdraft is only one aspect of the determination of whether or not a party has acquired a priority to underground water. There are more claims and contentions in this case than simply a claim of prescriptive rights.” (5:2-4)
Central Basin Adjudication

- Stipulated Judgment in 1962
- Currently 148 parties
- Rights to underground storage space not covered by the Judgment
- Who owns/controls the storage space?
Rights to Storage Space

• “Appellants claim that ‘the right to use storage space [is] an element of their water rights.’ If that were correct, it would follow that a prescriptive right to water necessarily encompasses a right to storage . . . Appellants’ prescriptive interest is in the use of the water, not in the storage space.” (109 Cal.App. 4th at 909.)
Rights to Storage Space

- “Appellants’ proposal ensures only that the Water Rights Holders would benefit from the exploitation of the storage space, either by using it or by selling it to the highest bidder. . . . The Constitution requires that the public benefit as well . . . .” (109 Cal.App.4th at 913.)
San Gabriel Basin

• Perchlorate CERCLA litigation
• South El Monte Operable Unit (SEMOU)
• Aerojet, et al. defendant PRPs
• April 12, 2004, Aerojet, et al. file cross-complaints
Third Party Complaints

• “Aerojet . . . alleges . . . that for over 30 years a substantial amount of Colorado River water was imported into the Basin and the SEMOU for Basin recharge purposes . . . and that such water contained hazardous substances and that such water imported for Basin recharge purposes was disposed on the ground or otherwise spread or caused to percolate down into the Basin.” (12:6-12)
Third Party Complaints

• Aerojet alleges that such contaminated Colorado River water has been imported to recharge the Basin as a response to overpumping of groundwater by various water entities. Aerojet further alleges that the Watermaster and MWD have caused such contaminated Colorado River water to be delivered and or spread or disposed in the Basin. (12:13-20)
PART 1

They Prefer Chaos
Groundwater and Governance

The citizens... do not want a comprehensive regional master plan, or a water
cause, although that is probably what they should have. They prefer chance.

—Colorado water broker on “ABC World News Tonight,”
August 22, 1989
CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

CENTRAL AND WEST BASIN WATER
REPLENISHMENT DISTRICT etc. B155143

Plaintiff and Respondent,

v.

SOUTHERN CALIFORNIA WATER
COMPANY, et al.

Defendants and Appellants.

(Los Angeles County

Appeal from a judgment of the Superior Court of Los Angeles County.
Reginald A. Dunn, Judge. Affirmed.

Hatch & Parent, Robert J. Saperstein and Russell M. McGlothlin for Defendant
and Appellant.

Weston, Benshoof, Rochefort, Rubalcava & MacCuish, Edward J. Casey and
Paeter E. Garcia for Plaintiff and Respondent.

Lemieux & O’Neill and Steven P. O’Neill for Amicus Curiae Central Basin
Municipal Water District.
This appeal presents two principal issues: who has the right to utilize unused storage space in the Central Basin, a groundwater basin, and who has the right to manage the subsurface storage space. These issues arise in the context of a motion that sought to allocate all of the usable storage space to the 148 public entities and private persons with the adjudicated right to extract water from the basin. The trial court denied the motion. It concluded that the unused storage space is a public resource, and that the Water Replenishment District of Southern California (WRD) is authorized to manage it. We affirm.

1 Groundwater “means nonsaline water beneath the surface of the ground, whether or not flowing through known and definite channels.” (Water Code § 60015.) Groundwater basin is “loosely” defined as “an area containing a groundwater reservoir capable of furnishing a substantial water supply.” (Todd, Groundwater Hydrology (John Wiley & Sons 2nd ed. 1980) p. 47.) The amount of storage space in a groundwater basin depends on the subsurface geological formations and the amount of vacant space between the soil particles. (Foley-Gannon, Institutional Arrangements for Conjunctive Water Management in California and Analysis of Legal Reform Alternatives (2000) 6 Hastings W.-N.w. J. Envtl. L. & Pol’y 273, 278-279.)
FACTUAL AND PROCEDURAL BACKGROUND

The Parties

Appellants -- the Cities of Long Beach, Downey, Lakewood, Signal Hill, Santa Fe Springs, Pico Rivera, and Paramount, Southern California Water Company, California Water Service Company, Montebello Land and Water Company, South Montebello Irrigation District, and Tract 349 Mutual Water Company -- are several of the entities with the adjudicated right to extract water from the Central Basin. Appellants describe themselves as “provid[ing] potable water services to more than one million businesses and residents in western Los Angeles County.” According to Appellants, collectively they control about 50 percent of the total permissible annual pumping allocation from the Central Basin.

Respondent WRD was formed in accordance with and is governed by legislation. (Water Code §§ 60000 et seq.) The five members of WRD’s board are elected and serve staggered four-year terms. (§§ 60080 et seq., 60135 et seq.) With the exception of powers related to groundwater contaminants, WRD’s power may be exercised only for replenishment purposes. (§§ 60221, 60224, 60230.) Appellants and the other entities with the right to pump water from the Central Basin are charged an assessment to finance WRD’s activities. (§ 60317.)

Conjunctive Use

In Appellants’ view, the core issue in this case is the pressing need for expanded conjunctive use of the Central Basin. Conjunctive use describes a management technique, which involves the coordinated use of both surface water and groundwater resources. (Todd, Groundwater Hydrology (John Wiley & Sons 2nd ed. 1980) p. 371.) It is the method currently favored by the Legislature (§ 1011.5) and supported by all parties to this litigation. Benefits of conjunctive use include conservation, reduction in surface

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2 All further statutory citations are to this code.

In lieu and artificial recharge are two types of conjunctive use projects. In lieu projects involve using surface water in lieu of pumping water from a basin. (Association of Groundwater Agencies, *A Guide To Conjunctive Use in Southern California* (2000) pp. 6-7.) Artificial recharge requires forcing surface water into available storage space in an underground basin through percolation ponds or injection wells. (*Id.* at p. 8.)

In WRD’s view, it already implements conjunctive use projects and litigation is not necessary to further develop the storage space in the Central Basin. WRD boasts of having restored over 250,000 acre feet of water to the Central Basin. However, even by WRD’s own estimates, as of September 2001, less than two percent of the Central Basin’s storage space was utilized.

*The Central Basin*

The Central Basin extends approximately 277 square miles, underneath mostly urban or suburban land. (State of California Department of Water Resources (October 2000) WaterMaster Service in the Central Basin, p. 9.) Currently, 148 entities, including Appellants, have the right to extract water from the Central Basin (collectively Pumpers or Water Rights Holders). These entities include cities, municipalities, water companies, school districts, individuals, family trusts, landowners, businesses, religious institutions, cemeteries, nurseries, country clubs, and golf courses.

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On January 2, 1962, WRD’s predecessor, the Central & West Basin Water Replenishment District filed a complaint against over 500 parties for adjudication of water rights and injunctive relief (“Complaint”). It was alleged that each defendant extracted water from the Central Basin and that collectively defendants took too much water. According to the Complaint, if the extractions continued at their then-current rate, the groundwater level would be lowered, deeper wells would be necessary, and the Central Basin would be flooded with sea water. The principal relief requested was “[t]hat each Defendant who establishes the right to produce ground waters from the Central Basin be permanently enjoined from extracting annually ground waters from the Central Basin in an amount exceeding that quantity of water in acre feet determined by applying its pro-rata percentage of all the rights to produce groundwater in the Central Basin as determined by this Court, to the safe yield of the said basin as determined by this Court . . . .” No relief was requested with respect to the use of the storage space in the Central Basin.

The court entered the parties’ stipulated agreement as its judgment. The inter se adjudication awarded water rights to 508 parties (which have since been consolidated in 148 entities). Each party’s annual pumping allocation was described and each party was enjoined from overpumping absent specified conditions.

The judgment created a “carryover right” as follows: “In order to add flexibility to the judgment and assist in the physical solution to the problems of Central Basin, each party adjudged to have a Total Water Right or water rights and who, during a particular water year, does not extract from Central Basin a total quantity equal to such party’s Allowed Pumping Allocation for the particular water year, less any allocated subscription by such

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4 “Safe yield” is defined as “the maximum quantity of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result[,]” i.e. a gradual lowering of the groundwater levels. (City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 278.)
party for purchase of Exchange Pool . . . is permitted to carry over from such water year the right to extract from Central Basin in the next succeeding water year so much of said total quantity as it did not extract in the particular water year, not to exceed ten (10% percent of such party’s Allowed Pumping Allocation, or ten acre feet, whichever of said ten percent or ten acre feet is the larger).”

The numerous findings of facts listed in the judgment include two related to the storage of water. First, “[g]roundwater extractions from Central Basin are, and at all times have been affected by common problems of storage, replenishment, quality and supply among all persons extracting groundwater therefrom.” Second, the court found that extraction of 80 percent of a party’s water right would “permit economical utilization of the Central Basin and its preservation as a storage and reservoir facility.”

The court appointed a Watermaster to assist the court in the administration and enforcement of the judgment. The Watermaster’s duties included implementing measures to assure compliance with the judgment and preparing an annual report for the court.

The court reserved jurisdiction and amended the judgment twice. The second amendment modified the carryover provision to permit Pumpers to carry over 20 percent of their allocated pumping allowance from year to year. The Second Amended Judgment (Judgment), the operative judgment, reserves continuing jurisdiction unto the court “[t]o provide for such other matters as are not contemplated by the judgment and which might occur in the future and which if not provided for would defeat any or all of the purposes of this judgment to assure a balanced Central Basin subject to the requirements of Central Basin Area for water required for its needs, growth and development.”

**Appellants’ Motion**

Based on the reserved jurisdiction, on August 22, 2001, Appellants moved to amend the Judgment to “more fully quantify[] and allocat[e] the rights of adjudicated
water rights holders to use underground storage space in the Central Basin” (Motion). Appellants estimated that approximately 645,700 acre feet of storage space is available in the Central Basin.

The Motion proposed a single allocation of the unused storage space: the division of the total usable storage space among the 148 Pumpers in direct proportion to each extractor’s annual pumping allocation. Under the terms of the Motion, “[e]ach Pumper would be allocated the right to use a portion of the total available unused storage space in the Basin in direct proportion to that Pumper’s *pro rata* share of the total water rights in the Basin.” “[If] a Pumper holds 5% of the rights to extract water from the Basin, that Pumper would also hold 5% of the available storage space in the Basin.” Appellants argued that they were entitled to full use of the “available storage because they collectively are entitled to all of its groundwater. . . .”

The amended judgment as proposed by Appellants included the following three provisions:

1. “Through the Restated Judgment, each Party is granted an expanded right to Store Water in the Basin through an Allowed Storage Allocation . . . . The Allowed Storage Allocation is quantified based on each Party’s right to Extract Water from the Basin (their Total Water Right). Watermaster is authorized to regulate the use of the allowed Storage Allocation.” The following formula was proposed: “Allowed Storage Allocation = (Party’s Total Water Right)/(Sum of all Parties’ Total Water Right) *Total allowed Storage Allocation.”

2. “The Parties [the 148 entities with the right to pump water] collectively shall have the right to use the Total Storage Space for reasonable and beneficial purposes, subject to the terms and conditions of this Restated Judgment.” The “Total Storage

5 An acre foot is the amount of water that covers an acre of land one foot deep. An acre-foot is enough water to supply one or two households for one year.
Space” is defined as “the maximum amount of available space in the Basin . . . in which Water could be Stored or placed in Carryover for subsequent reasonable and beneficial uses . . . .”

3. “Allowed Storage Allocation, Carryover Credits, and Stored Water Credits can be assigned, licensed, or leased individually and separately from a Party’s Allowed Pumping Allocation. However, all Allowed Storage Allocation, Carryover Credits, and Stored Water Credits associated with any quantity of Allowed Pumping Allocation shall accompany and be transferred at the same time as a sale of that quantity of Allowed Pumping Allocation. If a Party only sells a portion of an Allowed Pumping Allocation, that Party shall retain the Allowed Storage Allocation, Carryover Credits, or Stored Water Credits only in the amount associated with the amount of Allowed Pumping Allocation retained.”

**WRD’s Opposition To The Motion**

WRD opposed the Motion, arguing that the trial court lacked jurisdiction. WRD maintained that storage is separate and distinct from extraction. WRD also argued that the proposed allocation interfered with its statutory powers and that the unused storage space is a public resource.

**The Watermaster Neither Supports Nor Opposes The Motion**

The Motion proposed alterations to the powers of the Watermaster, increasing the Watermaster’s responsibilities to include “regulat[ion]” of the storage space to ensure that “(1) the Allowed Storage Allocation is exercised consistently with the terms and the intent of the Restated Judgment, (2) Central Basin water quality is protected, and (3) the Extraction and Storage rights of the Parties are not impaired.”
The current Watermaster—the Southern District of the California Department of Water Resources—indicated that it “neither supports nor opposes the merits of the Motion.” In a declaration, Charles White, the Chief of the Southern District of the Department of Water Resources, declared that “The Department supports expansion of ‘conjunctive use’ of groundwater and surface supplies as a cost-effective and environmentally favorable means of improving water supply reliability.”

Trial Court’s Findings

In denying the Motion, the trial court found that the Judgment was limited to the right to pump water from the basin and the right to pump is a “totally different issue” from the right to put water in the basin. The court further concluded that the “right to use subsurface space to store imported water in a groundwater basin is separate and distinct right from the right to exercise an adjudicated groundwater right.” The court also determined that WRD “has the statutory authority to replenish and store waters for conjunctive use management.” Appellants timely appealed.

CONTENTIONS

Appellants contend that the Judgment reserves jurisdiction to consider the allocation of storage rights in the Central Basin. Their principal argument is that the Motion proposed a practical plan to utilize more effectively the unused underground storage space and that the Pumpers are the most appropriate entities to benefit from conjunctively using the space. For legal support, Appellants rely on the doctrine of mutual prescription and on the carryover right described in the Judgment. Finally, Appellants vigorously dispute WRD’s asserted managerial authority.

WRD challenges the court’s jurisdiction. In the alternative, WRD argues that the Pumpers do not possess the subsurface storage space and cannot privatize the public

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6 The Department of Water Resources is a state agency vested with authority over water matters. (See §§ 120 et seq., 225 et seq.)
resource. WRD also claims that several provisions proposed in the Motion interfere with its statutory powers.

The City of Los Angeles, the Central Basin Municipal Water District, the Upper Los Angeles River Watermaster, and the Main San Gabriel Watermaster filed amici curiae briefs with this court. We consider the arguments raised by the amici curiae to the extent those arguments are urged by either party or integrally intertwined with the issues raised by the parties. However, we do not consider the issues raised by the amici curiae that were not advanced by the parties. (California Assn. For Safety Education v. Brown (1994) 30 Cal.App.4th 1264, 1274 [“It is a general rule that an amicus curiae accepts a case as he or she finds it.”].)

DISCUSSION

First, we consider jurisdiction, the threshold issue. Second, we summarize applicable California water law. Then we discuss Appellants’ claims that they collectively possess the storage space under the doctrine of mutual prescription and under the Judgment. We also consider the relevant policies advanced by Appellants. Finally, in the last section, we discuss the scope of WRD’s authority as it pertains to the Motion.

I. Jurisdiction

Courts regularly affirm the expansive retention of jurisdiction in cases involving water rights. (City of Pasadena v. City of Alhambra (1949) 33 Cal.2d 908, 937; City of L. A. v. City of Glendale (1943) 23 Cal.2d 68, 81.) “The retention of jurisdiction to meet future problems is regarded as an appropriate exercise of equitable jurisdiction in litigation over water rights, particularly when the adjustment of substantial public interests is involved.” (City of L. A. v. City of Glendale, supra, 23 Cal.2d at p. 81.) That is exactly what happened here; the Judgment reserved jurisdiction to meet future problems and adapt to changed circumstances.

Specifically, the court reserved jurisdiction “[t]o provide for such other matters as are not contemplated by the judgment and which might occur in the future, and which if not provided for would defeat any or all of the purposes of this judgment to assure a balanced
Central Basin subject to the requirements of Central Basin Area for water required for its needs growth and development.” The allocation of storage space falls within this broad provision. The parties agree that the development of the unused storage space will facilitate conservation and improve the reliability of the water supply for the region. Even WRD acknowledges that several Pumpers “have a need for water that exceeds the level of their ‘Allowed Pumping Allocation.’” Conservation of water and reliability of the water supply are matters of significant public interest and are of “transcendent importance.” (Gin S. Chow v. City of Santa Barbara (1933) 217 Cal. 673, 702.)

The broad retention of jurisdiction in the Judgment differs substantially from the limited retention of jurisdiction considered in Big Bear Mun. Water Dist. v. Bear Valley Mutual Water Co. (1989) 207 Cal.App.3d 363 and relied on by WRD. In Big Bear Mun. Water Dist. v. Bear Valley Mutual Water Co., the trial court interpreted a provision limiting continuing jurisdiction to the “interpretation, enforcement or carrying out this Judgment.” (Id. at p. 370, emphasis omitted.) The trial court found that the language excluded any modification of the terms of the judgment. (Id. at p. 374.) Whereas the Judgment in the present case retained expansive jurisdiction to provide for matters not contemplated by the court, the judgment in Big Bear Mun. Water Dist. retained limited jurisdiction only to interpret enforce or carry out the judgment. Because the language of the two provisions are entirely different, Big Bear Mun. Water Dist. is inapposite.

The retention of jurisdiction here does not contravene the well established rule that a court cannot adjudicate future water rights. (City of Pasadena v. City of Alhambra supra, 33 Cal.2d at p. 937; Orange County Water District v. City of Colton (1964) 226 Cal.App.2d 642, 648-649.) Under this rule, even though the prospective reasonable beneficial uses of an overlying owner are protected, the specific quantity of water necessary for prospective uses cannot be determined until the need arises. (Tulare Dist. v. Lindsay-Strathmore Dist. (1935) 3 Cal.2d 489, 525.) This rule is inapplicable here because the allocation of storage space requires “no declaration as to future rights in
water [or storage space] to which a party has no present right.” (City of Pasadena v. City of Alhambra supra, 33 Cal.2d at p. 937.) Jurisdiction over the Motion is proper.

II. Water Rights Under California Law

To place Appellants’ Motion in proper context, we summarize the governing law.

A. The Storage Space In The Central Basin Is A Public Resource

The California Constitution mandates the use of all water resources in a manner consistent with the interest of the people. Article X, section 2 (formerly article XIV, section 3) requires that: “the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.”

The purpose of the constitutional amendment was to ensure that the state’s water resources would be “available for the constantly increasing needs of all of its people.” (Meridian, Ltd. v. City and County of San Francisco (1939) 13 Cal.2d 424, 449.) This broad constitutional provision encompasses “the use of all of the water within the state.” (Modesto Properties Co. v. State Water Rights Board (1960) 179 Cal.App.2d 856, 860.) It is applicable to “the settlement of all water controversies” (Miller & Lux v. San Juaquin L. & P. Corp. (1937) 8 Cal.2d 427, 435), and to surface storage. (Meridian,

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7 Appellants also rely on a provision in the court’s reservation of power enabling the court to adjust the “permissible level of extractions from Central Basin in relation to achieving a balanced basin and an economic utilization of Central Basin for groundwater storage . . . .” This reservation of jurisdiction, however, relates specifically to determining the level of extractions, not the storage allocation.

8 The parties agree that the unused storage space in the Central Basin is a public resource. Ignoring the general rule that amici curiae must take the case as they find it, several amici curiae vigorously disagree. Because the amici curiae’s argument is intertwined with the issues raised by the parties, we consider the issue on the merits.
Ltd. v. San Francisco, supra, 13 Cal.2d at pp. 449-450.) Subsurface storage, which is akin to a natural reservoir (City of Los Angeles v. City of Glendale, supra, 23 Cal.2d at p. 76), also falls within this broad provision.

The same policy described in article X, section 2 – that water resources must be used in the public interest -- is expressed in several statutes. (§ 100 \(9\) § 105.\(10\)) Most significantly, under section 105, underground water resources must be developed “for the greatest public benefit.” In short, the parties’ statement that the subsurface storage space is a public resource is amply supported by the Constitution and Water Code.

B. The Right To Water Is Usufructuary

At least since 1928 when the predecessor to article X section 2 of the Constitution was adopted, there is no private ownership of groundwater. (State of California v. Superior Court (2000) 78 Cal.App. 4th 1019, 1023, 1025.) The State of California owns all of the groundwater in California, not as a proprietary owner, but in a manner that empowers it to supervise and regulate water use. (Id. at pp. 1022, 1026.) Water rights holders have the right to “take and use water,” but they do not own the water and cannot waste it. (Id. at p. 1024.)

\(9\) That statute provides: “because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.”

\(10\) That statute provides: “It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit.”
A person obtains a right to extract groundwater by owning specific land, by appropriating water (City of Pasadena v. City of Alhambra (1949) 33 Cal.2d 908, 925 (City of Pasadena)), or by inheriting a pueblo right. (Pleasant Valley Canal Co. v. Borror (1998) 61 Cal.App.4th 742, 751.) Ownership of land appurtenant to groundwater engenders an “overlying right.” (City of Pasadena, supra, 33 Cal.2d at p. 925.) Under the “correlative rights doctrine,” “as between the owners of land overlying strata of percolating waters, the rights of each to the water are limited, in correlation with those of others, to his ‘reasonable use’ thereof when the water is insufficient to meet the needs of all. [Citations.]” (Niles Sand & Gravel Co. v. Alameda County Water Dist. (1974) 37 Cal.App.3d 924, 934.) An appropriative right is based on the taking of groundwater. (Ibid.) Pueblo rights apply to municipal successors to Mexican and Spanish pueblos. (Pleasant Valley Canal Co. v. Borror, supra, 61 Cal.App.4th at p. 751.)

Where an appropriation of water is wrongful, open, notorious, continuous for the statutory period of five years, hostile, and adverse it may mature into a prescriptive right. (City of Pasadena, supra, at pp. 925-926.) Like other water rights, prescriptive rights are “artificial creatures of law.” (Orange County Water District v. City of Colton, supra, 226 Cal.App.2d at p. 646.) “To perfect a claim based upon prescription there must, of course, be conduct which constitutes an actual invasion of the former owner’s rights so as to entitle him to bring an action.” (City of Pasadena, supra, 53 Cal.2d at p. 927.) The scope of a prescriptive right depends on what was obtained in an open, notorious, continuous manner. (Cf. Connolly v. McDermott (1984) 162 Cal.App.3d 973, 977 [considering a prescriptive easement].)

C. Mutual Prescription

City of Pasadena, supra, 33 Cal.2d 908, developed the later-named doctrine of mutual prescription. Similar to the 1965 adjudication in this case, City of Pasadena involved litigation to determine how much water each extractor could pump from a basin without
further exacerbating a developing overdraft.  

(Id. at p. 916.) All but one party, the California-Michigan Land and Water Company, stipulated to a judgment that included the following critical stipulation: “all of the water taken by each of the parties to this stipulation and agreement, at the time it was taken, was taken openly, notoriously and under a claim of right, which claim of right was continuously and uninterruptedly asserted by it to be and was adverse to any and all claims of each and all of the other parties joining herein.” (Id. at p. 922.)

Focusing on the fact that, even though the entities continued to extract water from the basin, some water remained in the basin, the California-Michigan Land and Water Company argued that there was no injury, an element of prescription. (Id. at p. 928.) The court rejected the argument, reasoning that “[t]he pumping by each group . . . actually interfered with the other group in that it produced an overdraft which would operate to make it impossible for all to continue at the same rate in the future.” (Id. at p. 931.) Although the parties could have continued extracting water from the basin, the continued pumping interfered with the future ability to extract water and accordingly, satisfied the invasion element of prescription. (Id. at p. 932.) The Supreme Court applied the principle of mutual interference to bind all of the basin’s pumpers.

After finding mutual interference, the court considered which entities were required to reduce their extractions. With little analysis, the court concluded that a proportional reduction was more equitable than an elimination of certain uses of water. (Id. at p. 933.) “A pro tanto reduction of the amount of water devoted to each present use would normally be less disruptive than total elimination of some uses.” (Id. at p. 933.) Thus,

11 An accumulated overdraft is the aggregate amount of groundwater removed from a basin which exceeds the quantity of nonsaline water replaced in the groundwater basin. (See § 60023[defining accumulated overdraft in a basin governed by WRD].) Annual overdraft is the amount of ground water removed in a given water year that exceeds the supply of nonsaline water replaced therein. (Cf § 60022 [defining annual overdraft in a basin governed by WRD].)
the court upheld a proportional allocation, wherein each party had the right to use some amount of water from the basin in proportion to that party’s prescriptive right.

The use of a proportional apportionment to allocate extraction rights subsequently was limited in City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199 (City of San Fernando). In City of San Fernando, the high court questioned “mechanically” allocating water and found that such allocation “does not necessarily result in the most equitable apportionment of water according to need. A true equitable apportionment would take into account many more factors.” (14 Cal.3d at p. 252.) The court never enumerated the “many more factors,” but, in a footnote, cited Nebraska v. Wyoming (1945) 325 U.S. 589, 618 which, in the context of a water dispute among states, listed the following factors as illustrative: “physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former . . . .” (City of San Fernando, supra, 14 Cal.3d at pp. 265-266, fn. 61.)

City of San Fernando involved, among other things, a dispute whether the City of Los Angeles could recapture water it imported and stored in a groundwater basin even though the water was not specifically traceable. (City of San Fernando, supra, 14 Cal.3d at pp. 255-256.) The court upheld the right of the city to recharge artificially the basin and to recapture the water it imported. (Id. at p. 264.) “The purpose of giving the right to recapture returns from delivered imported water priority over overlying rights and rights based on appropriations of the native ground supply is to credit the importer with the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there.” (Id. at p. 261.) However, the court declined to consider any further allocation of storage rights, because “there [did] not appear to be any shortage of underground storage space in relation to the demand therefore.” (Id. at p. 264.) The City of San Fernando court relied on City of L. A. v. City of Glendale (1943) 23 Cal.2d 68, 76,
where the City of Los Angeles’s right to use the water it stored in the San Fernando Valley was upheld.

More recently, the Supreme Court harmonized City of Pasadena and City of San Fernando. “City of San Fernando distinguished City of Pasadena, supra, 33 Cal.2d 908, where a ‘restriction to safe yield on a strict priority basis might have deprived parties who had been using substantial quantities of groundwater for many years of all further access to such water.’ [Citation.]” (City of Barstow v. Mojave Water Agency (2000) 23 Cal.4th 1224, 1246-1247.) “Case law simply does not support applying an equitable apportionment to water use claims unless all claimants have correlative rights; for example when parties establish mutual prescription. Otherwise, cases like City of San Fernando require that courts making water allocations adequately consider and reflect the priority of water rights in the basin.” (City of Barstow, supra, 23 Cal.4th at p. 1248.)

III. Mutual Prescription Does Not Apply To The Storage Space

Relying on City of Pasadena, supra, 33 Cal.2d 908, 931-933, Appellants argue the Pumpers’ right to the total unused storage space was created by the doctrine of mutual prescription. According to Appellants, “[t]he proposed proportional allocation of storage rights would follow the same format set forth in the ‘mutual prescription’ doctrine by providing equal priority shares of the total allocated storage in proportion to each party’s existing allocation of production and carryover rights. Accordingly the proposal is a legally sound, equitable, and rational method to allocate rights to store water among the parties.”

We disagree with Appellants’ statement for two reasons: (1) there is no evidence that the Pumpers satisfied the elements of mutual prescription; and (2) the mechanical equitable apportionment used in City of Pasadena is not applicable here.

A. Mutual Prescription

The doctrine of mutual prescription applies only if the use of the claimed right was actual, open, notorious, hostile and adverse to the original owner and continuous for the statutory period. (City of Barstow, supra, 23 Cal.4th at p. 12451.) Appellants bear the
burden of establishing each element, and have failed to demonstrate any one. (Pleasant Valley Canal Co. v. Borror, supra, 61 Cal.App.4th 742, 784.) The Motion concerned unused property that by definition was not continuously used in an open, notorious, and hostile manner.

Appellants do not argue that they appropriated water for storage. Nor do Appellants argue that they appropriated storage space for water by physically storing water in the Central Basin (putting aside the carryover right to which we shall return). Without appropriation, there is no prescriptive right. (See Tehachapi –Cummings County Water Dist. v. Armstrong (1975) 49 Cal.App.3d 992, 1000.) Without prescription, there is no mutual prescription.

B. Equitable Apportionment

In City of Pasadena, the court affirmed a proportional allocation to avoid the elimination of any present use. (City of Pasadena, supra, 33 Cal.2d at p. 933.) The circumstances in this case warrant no similar concern because the Motion involved only unused storage space, which by definition does not tread upon current uses. Appellants’ assume that a proportional allocation is necessarily equitable, the “mechanical” assumption criticized in City of San Fernando and held inapplicable in City of Barstow unless the parties rights are either correlative or based on mutual prescription, doctrines that do not apply here. (See also Hi-Desert County Water Dist. v. Blue Skies Country Club, Inc. (1994) 23 Cal.App.4th 1723, 1734, fn. 11.)

Appellants claim that “the right to use storage space [is] an element of their water rights.” If that were correct, it would follow that a prescriptive right to water necessarily encompasses a right to storage. However, Appellants water rights are based on prescription, which in turn, is based on and limited to the property actually used. (Cf. Connolly v. McDermott, supra, 162 Cal.App.3d at p. 977 [considering a prescriptive easement].) Appellants prescriptive interest is in “the use of the water, not in the storage space.” (In re Application U-2 Central Nebraska Public Power and Irrigation District (Neb. 1987) 226 Neb. 594, 610.)
IV. The Judgment Does Not Grant Appellants A Storage Right

Appellants rely on the Judgment and judgments from other basins to argue that they collectively have the right to all of the unused storage space. Specifically, Appellants argue that (1) storage of water is linked to extraction, a right already given to the Pumpers under the Judgment; (2) their carryover right is tantamount to a storage right; and (3) judgments in other basins correctly award storage rights to the entities authorized to extract water from those basins. As we shall explain, even assuming the correctness of Appellants’ predicate facts, the conclusion they seek – possession of all of the unused storage space – does not follow.
A. Linkage of Storage And Extraction Rights

Appellants argue that the proportional allocation is appropriate because storage and extraction are hydrologically linked, a contention supported by the record, case law, and also advanced by the amici curiae. Appellants, however, cite no law that generally holds that a legal interest in one right results in an interest in all “linked” rights, or that more specifically holds that the right to store water attaches to the right to extract water from a groundwater basin. If Appellants’ theory were correct, adjacent property owners would have more control over their neighbors than nuisance law affords them, easement owners would have more control over the dominant tenement than property law affords them, and end water users would have more control over water extraction than water law affords them. (See e.g. Gadowski v. Louie (2000) 84 Cal.App.4th 1395, 1408; Scruby v. Vintage Grapevine, Inc. (1995) 37 Cal.App.4th 697, 702-703; State of California v. Superior Court, supra, 78 Cal.App.4th at p. 1026.) Extraction and storage are different physical processes; establishing a hydrologic link between them is not sufficient to show that a legal interest in one creates an interest in the other. (Indeed, it is undisputed that while WRD has authority to store water, it has no authority to extract water.)

In a related claim, Appellants argue that “[a]s a practical matter” they are best positioned to use the storage space because they already possess wells. According to Appellants, it is “logical” to grant them the right to use the storage space because they are

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12 For example, it is the extraction of water from the basin that creates the storage space. A furlough of extraction augments the supply of water in storage. The cost to Appellants of extraction is also linked to the amount of water in storage because the cost of pumping water depends on the distance the water must be lifted. Storage capacity is a component of determining the safe yield, which in turn influences the permissible level of extraction. (Allen v. California Water and Tel. Co. (1946) 29 Cal.2d 466, 475.) In addition, the quality of extracted groundwater is affected by the quality of water stored in a groundwater basin. (Foley-Gannon, Institutional Arrangements for Conjunctive Water Management in California and Analysis of Legal Reform Alternatives, supra, 6 Hastings W.-N.W. J. Envtl. L. & Pol’y at p. 280.)
the only entities who can extract water from the Central Basin. Appellants appeal to “common sense,” arguing that common sense requires “groundwater production be managed in a coordinated fashion along with the use of storage space . . . .”

Appellants’ reliance on common sense and practicalities are unpersuasive as indications of existing legal rights. Justice Mosk’s concern that “[c]ommon-sense’ is in the eye, or mind, of the beholder” (*Commercial Life Ins. Co. v. Superior Court* (1988) 47 Cal.3d 473, 485, diss. opn. Mosk, J.) is heightened where, as here, Appellants’ claim is that common sense supports a legal right for which there is no legal authority. Although courts have applied “common sense” in interpreting the meaning of a statute, (see *id.* at pp. 477-485), Appellants cite no cases where courts have relied only on “common sense” or practicalities to award water or property rights.

**B. Carryover Rights**

The carryover provision permits the Pumpers to carryover a limited amount of their allotted water right and store it for a fixed period of time. According to the Watermaster, “[t]his flexibility was necessary to meet unforeseen emergencies in water demand.” Appellants emphasize the carryover provision, identifying it as a carryover storage provision and underscoring the physical result of carrying over water: “[u]npumped groundwater that is ‘carried over’ occupies physical ‘storage’ space in the Basin.” Appellants estimate that if all Pumpers exercised their carryover right 45,000 acre feet of storage would be used.

To the extent Appellants are arguing their right to use 45,000 acre feet of storage space results in the right to use all of the storage space, that argument suffers from the same problems as their “linked” argument. One right does not automatically engender another even if they are interrelated. Pumpers’ limited right to carryover their annual pumping allocation, assuming it is aptly characterized as a storage right, does not confer a greater right to utilize storage space in addition to that granted in the carryover provision.

Appellants may be understood to argue that the carryover provision facilitates in lieu conjunctive use of the Central Basin. They assert that “[m]odern conjunctive use
practices are built upon ‘in lieu’ storage, which is made possible by carryover.’”
Appellants further state (with no support) that “[i]n-lieu storage is likely to be the most
efficient and economic means of storing water in the Central Basin because it relies on
existing water distribution infrastructure . . . .” At most, Appellants have shown that
increasing the amount of water that can be carried over from year to year might create
incentives for the Water Rights Holders to purchase surface water in lieu of pumping
from the Central Basin. However, the Motion sought to allocate all of the unused storage
space, not merely to increase the Pumpers’ carryover rights.

C. Judgments In Other Basins

Finally, Appellants and several amici curiae describe and emphasize the allocations
of storage space developed and implemented in other California groundwater basins. The
trial court judgments from other basins are irrelevant to the issues in this case. The
judgments are not persuasive or binding authority.

“It is the policy of the law to discourage litigation and to favor compromise and
voluntary settlements of doubtful rights and controversies, made either in or out of
court.” (Central Basin etc. Wat. Dist. v. Fossette (1965) 235 Cal.App.2d 689, 705.)
Parties may agree to a solution that “‘waives or alters their water rights in a manner
which they believe to be in their best interest.’” (City of Barstow v. Mojave Water
Agency, supra, 23 Cal.4th 1224, 1238 [quoting and approving Court of Appeal
observation].) The agreements reached by parties in other basins are not helpful to
understanding the rights of the parties in the Central Basin within existing legal
frameworks.

V. The Proportional Allocation Aspect Of The Storage Motion Does Not
Guarantee Beneficial Use

In their Motion, Appellants advanced a single proposed allocation: each Pumper
would be entitled to a pro rata share of the total usable storage space in proportion to the
Pumper’s allocated right to extract water in a manner where the storage space rights
could be freely transferred. Appellants explain that “[a] market for Basin water rights
currently exists in which Water Right Holders can sell or lease rights that exceed their present demand. [Citation.] Similarly, those that possess storage allocation in excess of their needs could sell or lease their surplus. Thus, each entity that has historically relied on the Basin would receive benefit from the use of Central Basin’s storage space, while simultaneously ensuring that the resource is used by those entities that value it most.”

Appellants’ proposal fails to ensure that the storage space will be used for the public benefit. The proportional allocation ignores the priorities of water use set by the Legislature, which declare that the use of water for domestic purposes as the highest and the use for irrigation as the second priority. (§ 106; see also Prather v. Hoberg (1944) 24 Cal.2d 549, 562 [“Without question the authorities approve the use of water for domestic purposes as first entitled to preference.”].) Further, Appellants’ proposal ensures only that the Water Rights Holders would benefit from the exploitation of the storage space, either by using it or by selling it to the highest bidder. As Appellants conclude, under their proposal, “each entity that has historically relied on the Basin would receive benefit from the use of Central Basin’s storage space. . .” The Constitution requires that the public benefit as well by mandating that the use of water resources be consistent with the interest of the people and for the public welfare.

Appellants recognize the constitutional mandate and argue that granting the Motion is consistent with the constitutional mandate because the proportional allocation would result in public accountability and would lead to greater efficiency. We discuss the claims separately.

A. Public Accountability

Relying on one consultant’s statement, Appellants argue that the Pumpers are directly accountable to the “consumers who put Central Basin water to beneficial use.” Similarly, in its amicus curiae brief, the City of Los Angeles argues that municipalities are directly accountable to the public. There is some support for the claim that municipalities are well positioned to respond to the future needs of their residents as the City of Los Angeles argues. (Baldwin v. County of Tehema (1994) 31 Cal.App.4th 166,
However, the proposed proportional allocation applies regardless of whether the Water Right Holder is accountable to the public and therefore provides no safeguard for the public. In addition, the Motion permits the Pumpers to sell their storage rights to “those entities that value it most” without any guarantee that the “entities that value it most” also are accountable to the public.

B. Efficiency

In developing public resources for the greatest public benefit, efficiency is one relevant factor. ([Section 106.5](#) provides: “It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefore exists.”) Efficiency is not, however, synonymous with reasonable or beneficial use; “the most efficient use of water [resources] is not necessarily its most beneficial or reasonable use.” ([Big Bear Mun. Water Dist. v. Bear Valley Mutual Water Co., supra, 207 Cal.App.3d 363, 378.](#)) To be consistent with the Constitutional mandate, the use of storage space must be exercised “with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.” ([Cal. Const., art. X, § 2.](#)) Even assuming Appellants’ have demonstrated their proposal would result in greater efficiency, a statement based only on the opinion of Appellants’ consultant, that is not enough to satisfy the Constitutional mandate. ([Big

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13 Section 106.5 provides: “It is hereby declared to be the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses, but that no municipality shall acquire or hold any right to waste water, or to use water for other than municipal purposes, or to prevent the appropriation and application of water in excess of its reasonable and existing needs to useful purposes by others subject to the rights of the municipality to apply such water to municipal uses as and when necessity therefore exists.”

14 Appellants rely on the opinion of Rodney Smith, the president of a water supply development company and the senior vice president of a consulting firm, who states that
Embedded within Appellants’ efficiency claim is a request for clearly defined water rights, a prerequisite for an efficient market. The request for definition is understandable in light of the deleterious effects of uncertainty. “Initially, [uncertainty] inhibits long range planning and investment for the development and use of waters in a stream system. . . . [¶] Uncertainty also fosters recurrent, costly and piecemeal litigation.” (In re Waters of Long Valley Creek Stream System (1979) 25 Cal.3d 339, 355.) The need for clear definition, however, supports no particular allocation including that proposed by Appellants.

VI. WRD Is Authorized To Manage The Storage Space In The Central Basin

For reasons we shall explain, WRD has authority to store water for conjunctive use and has authority to manage the storage space in the Central Basin.

WRD is expressly authorized to store water for the purpose of replenishing the district. 15 (§ 60221, subd. (e).) Storing water for replenishment purposes is essentially

allocating storage rights to the Pumpers will promote the marketability of water rights, reduce transaction costs, and foster cooperative development. Transaction costs “are the aggregate costs incurred as part of the transfer process that can be apportioned to buyers, sellers, state or local agencies and institutions, and third parties.” (Kaiser, Texas Water Marketing In The Next Millennium: A Conceptual and Legal Analysis (1996) 27 Tex. Tech L. Rev. 181, 211.)


15 The WRD enabling legislation does not expressly define the term replenish. In the context of groundwater, the term replenish has specialized meanings: (1) “spreading
the same as storing water for conjunctive use. The Judgment defines “‘Artificial Replenishment’ [as] the replenishment of Central Basin achieved through the spreading of imported or reclaimed water for percolation thereof into Central Basin by a governmental agency.” This form of artificial replenishment involves forcing surface water into underground basins by artificial recharge just as the artificial recharge conjunctive use projects described by Appellants. Because there is no meaningful distinction between storing water for replenishment purposes and storing water for conjunctive use, WRD’s authorization to store water for replenishment purposes includes conjunctive use projects.

The Legislature also granted WRD authority to “manage and control water for the beneficial use of persons or property within the district.” (§ 60221, subd. (e).) This broad power necessarily encompasses management of at least some portion of the storage space because the water WRD is authorized to manage and control is located in the basin’s storage space. The plain meaning of the statute governs where the language is unambiguous. (Day v. City of Fontana (2001) 25 Cal.4th 268, 272.) Here, the plain language of the statute grants WRD management authority.

The Legislature also authorized WRD to manage in-lieu replenishment projects when it expressly permitted WRD to “fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of groundwater, and to that end a district may become a party to the contract and pay from district funds that portion of the cost of the replenishment waters as will encourage the purchase and use of that water in lieu of pumping so long as the persons or property within the district are directly or indirectly benefited from the

water over a permeable area for the purpose of allowing it to percolate to groundwater basins or aquifers, or otherwise addition water to groundwater basins or aquifers” (§§ 121-322, 131-322, and 137-316 ) or (2) “spreading water over a permeable area for the purpose of allowing it to percolate to the groundwater basin, or otherwise adding water to the groundwater basin which without such effort would not augment the groundwater supply.” (§§ 119-317, 124-315, 128-317, 129-317, 135-317.)

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resulting replenishment.” (§ 60230, subd. (p).) The record suggests that WRD exercises this authority to engage in in-lieu replenishment projects similar to those yearned for by Appellants. According to the Watermaster’s October 2000 report, “[d]uring the 1965-1966 water year, WRD began a program of in-lieu replenishment. . . . [¶] The program may be used to: alter pumping patterns within a groundwater basin; replenish areas of low transmissivity where conventional recharge techniques are ineffective; heighten the effect of injecting water to form a sea water barrier by reducing extractions in the vicinity; reduce the amount of replenishment water purchased by WRD; and reduce the annual extraction from a groundwater basin . . . .”

WRD’s power is not unlimited. WRD conceded at oral argument that the Water Rights Holders have an interest in the natural replenishment and an interest to ensure that any imported water does not harm the basin. In addition, as Appellants point out, section 60230, subdivision (f) prohibits WRD from duplicating operations of other agencies, suggesting that WRD’s authority is not exclusive, an issue we need not further resolve in the context of this case.

In challenging WRD’s authority, Appellants argue that because WRD is required, on an annual basis, to evaluate the basin and decide what quantity of water to purchase for replenishment purposes, (§ 60315, subd. (a)), WRD’s authority is limited to replenishing the annual overdraft. Appellants’ reasoning makes no sense in light of the fact that the same statute that requires WRD to make findings with respect to the annual overdraft also requires WRD to make findings with respect to the accumulated overdraft (§ 60315, subd. (d)). There is no support for Appellants’ claim that the findings WRD is required to make are coextensive with WRD’s powers.

Finally, Appellants argue that, under section 60051, WRD’s interest is subordinate to their own. Section 60051 provides: “No language or provision in this division shall be interpreted or construed so as to limit, abridge or otherwise affect the water or water rights of any existing agency or person or affect the rights of existing agencies or persons with respect to any legal proceeding pending on May 1, 1955, wherein any water or water
right or the protection thereof is involved; provided, however, that nothing in this section shall be construed to limit the provisions of subdivision (7) of Section 60230 of this division.” Appellants have not shown that the finding that WRD has authority to manage the storage space “limit[s], abridge[s] or otherwise affect[s] the water or water rights of any existing agency or person . . . .” As explained above, Appellants do not have the rights, which they now claim are abridged, and therefore section 60051 does not assist them. 16

CONCLUSION

The Motion is the genesis of this case and establishes the framework for the parties’ arguments and our review. Our holding is limited to sole allocation proposed by Appellants in the trial court – an allocation of the total usable storage space to the Pumpers, with each Pumper entitled to a share proportional to his, her, or its allocated water right. WRD does not argue, and we do not hold, that the Pumpers are precluded from using the Central Basin storage space. We hold only that Appellants’ right to extract water from the Central Basin does not create a concomitant right to store water in the Central Basin.

DISPOSITION

The judgment is affirmed. Each party to bear its own costs on appeal.

CERTIFIED FOR PUBLICATION.

COOPER, P.J.

We concur:

16 The parties and amici vigorously dispute the applicability of Niles Sand and Gravel Co., Inc. v. Alameda County Water Dist., supra, 37 Cal.App.3d 924. We do not find that case to assist in the construction of WRD’s authority because it considered the role of a water district organized pursuant to section 30000, the County Water District Law. (Id. at p. 929 fn. 5, 937.)
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY OF MONTEREY PARK, Plaintiff,
v.
AEROJET-GENERAL CORPORATION, et al. AND DOES 1 THROUGH 10,
Defendants.

AEROJET-GENERAL CORPORATION,
Third Party Plaintiff,
v.
SAN GABRIEL VALLEY WATER COMPANY; SOUTHERN CALIFORNIA WATER COMPANY; MAIN SAN GABRIEL BASIN WATERMASTER; METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT; LOS ANGELES COUNTY DEPARTMENT OF PUBLIC

Case No.: CV 02-5909 ABC (RCx)
THIRD PARTY COMPLAINT

AEROJET-GENERAL CORPORATION'S THIRD PARTY COMPLAINT, Case No. CV 02-5909
WORKS; JAMES ANDRUSS AS
TRUSTEE OF THE ANDRUSS FAMILY
TRUST; ANDRUSS FAMILY TRUST;
JAMES ANDRUSS AS TRUSTEE OF
THE SURVIVORS TRUST UDT, DATED
SEPTEMBER 22, 1987; SURVIVORS
TRUST UDT, DATED SEPTEMBER 22,
1987; APW NORTH AMERICAN INC.,
F/K/A ZERO CORPORATION AND
ELECTRONIC SOLUTIONS; ARTISTIC
POLISHING & PLATING, INC.; MONA
SUE ART AS TRUSTEE OF THE ART
1981 REVOCABLE LIVING MARITAL
DEDUCTION TRUST; ART 1981
REVOCABLE LIVING MARITAL
DEDUCTION TRUST; MONA SUE ART
AS TRUSTEE OF THE ART 1981
REVOCABLE LIVING EXEMPTION
TRUST; ART 1981 REVOCABLE
LIVING EXEMPTION TRUST;
CARDCO; CARDINAL INDUSTRIAL
FINISHES; CLAMP MFG. CO., INC.;
DURHAM FAMILY LIMITED
PARTNERSHIP; DURHAM
TRANSPORTATION, INC.; EEMUS
MANUFACTURING CORP.; EDWARD
H. FRANZEN AS TRUSTEE OF THE
FRANZEN TRUST; FRANZEN TRUST;
INTERNATIONAL MEDICATION
SYSTEMS, LTD.; J.A.B. HOLDINGS,
INC., F/K/A J.A. BOZUNG COMPANY;
BAERBEL JANNEBERG AS TRUSTEE
OF THE JANNEBERG TRUSTS, F/K/A
SERVEX CORP.; JANNEBERG TRUSTS,
F/K/A SERVEX CORP.; GLORIA
JEBBIA AS TRUSTEE OF THE NORF
JAMES JEBBIA TESTAMENTARY
TRUST; NORF JAMES JEBBIA
TESTAMENTARY TRUST; LA
VICTORIA FOODS, INC.; ROC-AIRE
CORP.; SMITTYBILT, INC.;
SOUTHERN CALIFORNIA EDISON CO.; AND DOES 1 THROUGH 10, Third Party Defendants.

Aerojet-General Corporation ("Aerojet") brings this action against Third Party Defendants, hereby alleging as follows:

JURISDICTION AND VENUE

1. This action arises under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. Accordingly, this Court has original jurisdiction over this action pursuant to 42 U.S.C. § 9613(b), and also under 28 U.S.C. § 1331. This Court has jurisdiction over the federal declaratory relief claim pursuant to 28 U.S.C. § 2201. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367. The related state and federal law claims form part of the same controversy and are so intertwined that it is appropriate for this Court to exercise its supplemental jurisdiction over the state law claims.

2. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b) because Third Party Defendants reside and/or may be found in this District, the alleged releases or threatened release of hazardous substances that give rise to the claims herein occurred in this District, the groundwater at issue is within this District, and/or a substantial part of the events or omissions giving rise to these claims occurred within this District.

3. This Third Party Complaint arises out of the actions entitled San Gabriel Basin Water Quality Authority v. Aerojet-General Corporation, et al., Case No. CV 02-4565 ABC (RCx); San Gabriel Valley Water Company v. Aerojet-General Corporation, et al., Case No. CV 02-6346 ABC (RCx); Southern California Water Company v. Aerojet-General Corporation, et al., Case No. CV 02-6340 ABC (RCx); and City of Monterey Park v. Aerojet-General Corporation, et al., Case No. CV 02-5909 ABC (RCx) (collectively, the "Underlying Actions"). The Underlying
Actions are pending in the United States District Court, Central District of California before the Honorable Audrey B. Collins, and have been consolidated for pretrial purposes.

THE PARTIES

4. Third Party Plaintiff Aerojet is a Ohio corporation with its principal place of business in Sacramento County, California.

The Water Entity Third Party Defendants

5. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant San Gabriel Valley Water Company ("SGVWC") is a California corporation that provides water utility services and owns real property, vested groundwater rights, and storage rights, wells, and water treatment and distribution equipment. Aerojet is further informed and believes, and on that basis alleges, that at all times relevant to this action, SGVWC conducted significant business activities in this District.

6. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant Southern California Water Company ("SCWC") is a California corporation that owns and operates a public water supply system in the South El Monte area of Los Angeles County, and owns and operates real and personal property, including, but not limited to, vested water rights, water storage rights, groundwater extraction wells, water treatment equipment, and water distribution infrastructure and equipment. Aerojet is further informed and believes, and on that basis alleges, that at all times relevant to this action, SCWC conducted significant business activities in this District.

7. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant Metropolitan Water District of Southern California ("MWD") is a consortium of 26 cities and water districts incorporated under the authority granted by the 1969 Metropolitan Water District Act, and a public corporation, organized and existing under the state laws of California. Aerojet is further informed
and believes, and on that basis alleges, that at all times relevant to this action, MWD conducted significant business activities in this District.

8. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant Main San Gabriel Basin Watermaster (the "Watermaster") was established pursuant to a Consent Judgment in the action entitled Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al., Case No. 924128 (Cal. Sup. Ct., Los Angeles County). Aerojet is further informed and believes, and on that basis alleges, that at all times relevant to this action, the Watermaster conducted significant business activities in this District.

9. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant Upper San Gabriel Valley Municipal Water District ("USGVMWD") is a municipal water agency formed under the authority of the Municipal Water District Law of 1911, Water Code § 71000, et seq., and a member agency of MWD. Aerojet is further informed and believes, and on that basis alleges, that at all times relevant to this action, the USGVMWD conducted significant business activities in this District.

10. Aerojet is informed and believes, and on that basis alleges, that Third Party Defendant Los Angeles County Department of Public Works ("LACDPW") is a local public agency that operates approximately 27 spreading grounds throughout Los Angeles County. Aerojet is further informed and believes, and on that basis alleges, that LACDPW has been performing the functions of the Los Angeles Flood Control District since 1985. Aerojet is further informed and believes, and on that basis alleges, that at all times relevant to this action, LACDPW conducted significant business activities in this District.

11. The Third Party Defendants identified in paragraphs 5 through 10, above, shall be referred to collectively as the "Water Entity Third Party Defendants."
Other Third Party Defendants

12. Upon information and belief, Third Party Defendant James Andrus is Trustee of the Andrus Family Trust and the Survivors Trust UDT, dated September 22, 1987. Third Party Defendants Andrus Family Trust and the Survivors Trust UDT, dated September 22, 1987, directly and/or through a predecessor-in-interest, have owned and/or conducted operations at property located within the South El Monte Operable Unit ("SEMOU") of the San Gabriel Basin Superfund Site from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address(es) of said property may include 9420 Garvey Avenue, South El Monte, California and 2750 Rosemead Avenue, South El Monte, California.

13. Upon information and belief, Third Party Defendant APW North American Inc., f/k/a Zero Corporation and Electronic Solutions, is a Delaware Corporation doing business in California, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 3445 Fletcher Avenue, El Monte, California.

14. Upon information and belief, Third Party Defendant Artistic Polishing & Plating, Inc. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 9751 Klingerman Street, South El Monte, California.

15. Upon information and belief, Third Party Defendant Mona Sue Art is the Trustee of the Art 1981 Revocable Living Marital Trust and the Art 1981 Revocable Living Exemption Trust. Third Party Defendants the Art 1981 Revocable Living Marital Trust and the Art 1981 Revocable Living Exemption Trust, directly
and/or through a predecessor-in-interest, have owned and/or conducted operations at
property located within the SEMOU from which hazardous substances have been
released that have contributed to groundwater contamination in the SEMOU. The
address of said property may include 9751 Klingerman Street, South El Monte,
California.

16. Upon information and belief, Third Party Defendant Cardco
conducts business in California and, directly and/or through a predecessor-in-interest,
has owned and/or conducted operations at property located within the SEMOU from
which hazardous substances have been released that have contributed to groundwater
contamination in the SEMOU. The address of said property may include 1329
Potrero Avenue, South El Monte, California.

17. Upon information and belief, Third Party Defendant Cardinal
Industrial Finishes is a California corporation, and, directly and/or through a
predecessor-in-interest, has owned and/or conducted operations at property located
within the SEMOU from which hazardous substances have been released that have
contributed to groundwater contamination in the SEMOU. The address of said
property may include 1329 Potrero Avenue, South El Monte, California.

18. Upon information and belief, Third Party Defendant Clamp Mfg.
Co., Inc. is a California corporation, and, directly and/or through a predecessor-in-
interest, has owned and/or conducted operations at property located within the
SEMOU from which hazardous substances have been released that have contributed
to groundwater contamination in the SEMOU. The address of said property may
include 1503-05 Adelia Avenue, South El Monte, California.

19. Upon information and belief, Third Party Defendant Durham
Family Limited Partnership is a registered limited partnership in the State of
California, and, directly and/or through a predecessor-in-interest, has owned and/or
conducted operations at property located within the SEMOU from which hazardous
substances have been released that have contributed to groundwater contamination in
the SEMOU. The address of said property may include 2713 River Avenue, Rosemead, California.

20. Upon information and belief, Third Party Defendant Durham Transportation Inc., d/b/a Durham School Services, is a Delaware corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 2713 River Avenue, Rosemead, California.

21. Upon information and belief, Third Party Defendant Eemus Manufacturing Corp. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 1111 Rush Street, South El Monte, California.

22. Upon information and belief, Third Party Defendant Edward H. Franzen is Trustee of Franzen Trust. Third Party Defendant, the Franzen Trust directly or indirectly through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 10665 Rush Street, South El Monte, California.

23. Upon information and belief, Third Party Defendant International Medication Systems, Ltd. is a Delaware corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 1919 Santa Anita Avenue, South El Monte, California.

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24. Upon information and belief, Third Party Defendant JAB Holdings, Inc., f/k/a J.A. Bozung Company, is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 9401 Whitmore Street, El Monte, California.

25. Upon information and belief, Third Party Defendant Baerbel Janneberg is the Trustee of the Janneberg Trusts, f/k/a Servex Corp. Third Party Defendant Janneberg Trusts, f/k/a Servex Corp., directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 9960 Klingerman Street, South El Monte, California.

26. Upon information and belief, Third Party Defendant Gloria Jebbia is the Trustee of the Norf James Jebra Testamentary Trust. Third Party Defendant the Norf James Jebra Testamentary Trust, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said properties has been identified and may include 9920 and 9928 Hayward Way, South El Monte, California.

27. Upon information and belief, Third Party Defendant La Victoria Foods, Inc. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 9133 East Garvey Avenue, South El Monte, California.
28. Upon information and belief, Third Party Defendant Roc-Aire Corp. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said properties have been identified and may include 9710 and 9750 Klingerman Street, South El Monte, California.

29. Upon information and belief, Third Party Defendant Smittybilt, Inc. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 2118 Lee Avenue, South El Monte, California.

30. Upon information and belief, Third Party Defendant Southern California Edison Co. is a California corporation, and, directly and/or through a predecessor-in-interest, has owned and/or conducted operations at property located within the SEMOU from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU. The address of said property may include 2240 Walnut Grove Avenue, Rosemead, California.

31. Aerojet is ignorant of the true names and capacities of the Third Party Defendants sued as Does 1 through 10, inclusive, and therefore sues these Third Party Defendants by these fictitious names. Aerojet will amend this complaint to allege their true names and capacities when ascertained. Aerojet believes that each of the fictitiously named Third Party Defendants, directly and/or through predecessors-in-interest, has owned and/or conducted operations at facilities from which hazardous substances have been released that have contributed to groundwater contamination in the SEMOU or have otherwise introduced or arranged for the transport and/or disposal of contaminants into the SEMOU. The real names of Does
1 through 10, inclusive, are not known or ascertainable at this time because investigations to locate potentially responsible parties are ongoing.

GENERAL ALLEGATIONS

32. Aerojet has been named as a defendant in the Underlying Actions, which were filed during June, July, and August of 2002. Aerojet filed its Answers in the Underlying Actions on February 10 and May 14, 2003.

33. The San Gabriel Basin Water Quality Authority's (the "WQA"), SGVWC's, SCWC's, and CMP's claims are asserted under CERCLA §§ 107 and 113, 42 U.S.C. §§ 9607 and 9613; under California state law for negligence, public and private nuisance, trespass, and ultra hazardous activity; and for declaratory relief under 28 U.S.C. §§ 2201 and 2202. Through their complaints in the Underlying Actions, the WQA, SGVWC, SCWC, and the CMP seek: recovery of response costs, a declaratory judgment, actual, incidental, consequential, and punitive damages, and injunctive relief against Aerojet and others.

34. The WQA, SGVWC, SCWC, and CMP have alleged in the Underlying Actions that a groundwater aquifer commonly referred to as the San Gabriel Valley Basin (the "Basin"), and underlying most of the San Gabriel Valley in Los Angeles County, is polluted and contaminated by hazardous substances.

35. The United States Environmental Protection Agency ("EPA") has placed areas of the Basin on the National Priorities List and divided the Basin into "operable units" for investigation and remedial purposes, including one designated as the SEMOU. On or about September 29, 2000, EPA issued an Interim Record of Decision ("IROD"), contending that the groundwater in the SEMOU is contaminated with volatile organic compounds ("VOCs") and other hazardous substances, and seeking to address the purported contamination by presenting an interim remedial action to contain groundwater allegedly contaminated within the intermediate zone in the western portion of the SEMOU.
36. On or about August 28, 2003, EPA issued Unilateral Administrative Order No. 2003-17 (the "UAO") directing Aerojet and more than 35 others parties alleged to be responsible for the groundwater contamination in the SEMOU to perform a remedial design for the remedy described in the IROD, and to implement the design by performing the remedial action.

37. Aerojet is informed and believes, and on that basis alleges, that for over 30 years a substantial amount of Colorado River water was imported into the Basin and the SEMOU for Basin recharge purposes, including more than 150,000 acre-feet of Colorado River water imported prior to 1974-1975. Aerojet is further informed and believes that such water contained hazardous substances and that such water imported for Basin recharge purposes was disposed on the ground or otherwise spread or caused to percolate down into the Basin.

38. Aerojet is informed and believes and on that basis alleges that such contaminated Colorado River water has been imported to recharge the Basin as a response to, among other things, overpumping of groundwater by various water entities, including Third Party Defendants SGVWC and SCWC. Aerojet is further informed and believes and on that basis alleges that Third Party Defendants, the Watermaster, USGVMWD, MWD, and LACDPW, among others, have caused or arranged for such contaminated Colorado River water to be delivered and or spread or disposed into the Basin.

39. Aerojet is informed and believes, and on that basis alleges, that the Water Entity Third Party Defendants, and each of them, actively participated in the importation, delivery, spreading, or disposal into the Basin of contaminated Colorado River water in that SGVWC and SCWC have alleged that they own and operate wells where hazardous substances have come to be located, and/or in that they own or operate water distribution, spreading, or treatment facilities and equipment and/or are parties to contracts, agreements, or other arrangements whereby
contaminated Colorado River water is imported, delivered, spread, or otherwise disposed into the Basin.

40. Aerojet is informed and believes, and on that basis alleges, that through their activities, all Third Party Defendants, and each of them, have introduced, or arranged for the transport and disposal of, contaminants into the SEMOU.

41. Aerojet is informed and believes, and on that basis alleges, that one or more hazardous substances were disposed of and or released at one or more of the facilities currently or formerly owned and/or operated by each of the Third Party Defendants.

42. Aerojet is informed and believes, and on that basis alleges, that the operations of Third Party Defendants SGVWC's and SCWC's facilities, including but not limited to, current and historical pumping activities, which operations are directed or administered, in part, by the Watermaster, have caused the release, transport, and disposal of hazardous substances into and through the SEMOU.

43. Aerojet submitted public entity claim forms to the appropriate Third Party Defendants, pursuant to Cal. Govt. Code § 900 et seq.

FIRST CLAIM FOR RELIEF

Contribution Under CERCLA

(Against All Third Party Defendants)

44. Aerojet realleges paragraphs 1 through 43 above and incorporates them by reference.

45. Aerojet denies that it is liable under CERCLA for any costs incurred by any party to respond to the release and/or threatened release of hazardous substances into the soil or groundwater in the SEMOU. To the extent Aerojet is held liable for such costs, however, Third Party Defendants are liable to Aerojet for
contribution toward the costs of responding to the release and/or threatened release of
hazardous substances into the soil or groundwater in the SEMOU.

46. Each of the Third Party Defendants is a "person" within the
meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

47. The contaminants or substances discharged or disposed of into the
soil or groundwater in the SEMOU by Third Party Defendants are or contain
"hazardous substances" within the meaning of Section 101(14) of CERCLA, 42

48. The spillage, leakage, discharge or disposal of contaminants into
the soil or groundwater in the SEMOU by Third Party Defendants constitutes one or
more "releases" or "threatened releases" of hazardous substances into the
environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C.
§ 9601(22).

49. Aerojet has incurred and will continue to incur "response costs" in
responding to the release and/or threatened release of hazardous substances into the
soil or groundwater in the SEMOU within the meaning of Section 101(25) and
107(a) of CERCLA, 42 U.S.C. §§ 9601(25), 9607(a). The amount of such costs shall
be determined at trial.

50. All such response costs incurred by Aerojet are "necessary" costs
of response "consistent with the National Contingency Plan," 40 C.F.R. Part 300.

51. Third Party Defendants, and each of them, are or were "owners"
and/or "operators" of one or more "facilities" at the time hazardous substances were
disposed of and/or "arranged" for the disposal of hazardous substances into the soil or
groundwater in the SEMOU within the meaning of Sections 101(9), 101(20), and
107(a) of CERCLA, 42 U.S.C. §§ 9601(9), (20), and 9607(a).

52. Under 42 U.S.C. § 9613(f), Aerojet may seek contribution from
any person who is liable or potentially liable under section 107(a) of CERCLA, 42
U.S.C. § 9607(a). As liable or potentially liable persons under Section 107(a) of
CERCLA, Third Party Defendants, and each of them, are liable to Aerojet for
contribution for such costs, expenses, and damages as provided in section 9613(f)
that Aerojet has incurred, may incur, or be required or compelled to incur in
connection with contamination in the soil or groundwater in the SEMOU.

WHEREFORE, Aerojet prays for relief against Third Party Defendants as set
forth below.

SECOND CLAIM FOR RELIEF
Declaratory Relief Under CERCLA
(Against All Third Party Defendants)

53. Aerojet realleges paragraphs 1 through 52 above and incorporates
them by reference.

54. Aerojet is informed and believes and on that basis alleges that an
actual controversy exists between it and Third Party Defendants concerning liability
for any costs incurred to respond to the release and/or threatened release of hazardous
substances into the soil or groundwater in the SEMOU.

55. Unless all of the rights, duties and obligations of Aerojet and
Third Party Defendants are determined in this action, there will be a multiplicity of
actions. Judicial determination of the liability of Third Party Defendants is necessary
and appropriate at this time in order that Aerojet may ascertain its rights as against
each Third Party Defendant.

56. Pursuant to 28 U.S.C. § 2201(a) and 42 U.S.C. § 9613(g), this
Court has jurisdiction to award declaratory relief. Aerojet, therefore, requests a
judicial determination of its rights, and the duties and obligations of Third Party
Defendants, in responding to the release and threatened release of hazardous
substances in the soil or groundwater in the SEMOU.

57. Pursuant to 28 U.S.C. § 2202, Aerojet further requests that this
Court, after entering the declaratory judgment prayed for herein, retain jurisdiction of
this action to grant Aerojet such further relief against Third Party Defendants as
necessary and proper to effectuate the Court’s declaration.

WHEREFORE, Aerojet prays for relief against Third Party Defendants as set
forth below.

THIRD CLAIM FOR RELIEF

Contribution Under State Law

(Against All Third Party Defendants)

58. Aerojet realleges paragraphs 1 through 57 above and incorporates
them by reference.

59. The costs, damages and liabilities arising from the contamination
of the soil or groundwater in the SEMOU arose not as a result of any fault or
negligence on Aerojet’s part, but as a result of the acts or omissions of Third Party
Defendants, in that Third Party Defendants' negligent, intentional or otherwise
actionable acts or omissions have caused and permitted the contamination.

60. To the extent, however, that Aerojet is held liable for the costs or
damages arising from the contamination of the soil or groundwater in the SEMOU,
Third Party Defendants are liable to Aerojet to contribute to such costs and damages.
The amount of such costs and damages shall be determined at trial.

WHEREFORE, Aerojet prays for relief against Third Party Defendants as set
forth below.

FOURTH CLAIM FOR RELIEF

Declaratory Relief Under State Law

(Against All Third Party Defendants)

61. Aerojet realleges paragraphs 1 through 60 above and incorporates
them by reference.
62. Aerojet is informed and believes and on that basis alleges that an actual controversy exists between it and Third Party Defendants concerning liability for any costs incurred to respond to the release and/or threatened release of hazardous substances into the soil or groundwater in the SEMOU.

63. Unless all of the rights, duties and obligations of Aerojet and Third Party Defendants are determined in this action, there will be a multiplicity of actions. Judicial determination of the liability of Third Party Defendants is necessary and appropriate at this time in order that Aerojet may ascertain its rights as against each Third Party Defendant.

64. Pursuant to 28 U.S.C. § 2201(a), this Court has jurisdiction to award declaratory relief. Aerojet, therefore, requests a judicial determination of its rights, and the duties and obligations of Third Party Defendants, in responding to the release and threatened release of hazardous substances into the soil or groundwater in the SEMOU.

65. Pursuant to 28 U.S.C. § 2202, Aerojet further requests that this Court, after entering the declaratory judgment prayed for herein, retain jurisdiction of this action to grant Aerojet such further relief against Third Party Defendants as necessary and proper to effectuate the Court’s declaration.

WHEREFORE, Aerojet prays for relief against Third Party Defendants as set forth below.

**PRAYER FOR RELIEF**

WHEREFORE, Aerojet prays for judgment against Third Party Defendants as follows:

1. On the First and Third Claims for Relief, for contribution toward the costs of responding to the release and/or threatened release of hazardous substances in the soil or groundwater in the SEMOU, in an amount to be determined at trial, including without limitation, the costs of investigating the extent of the contamination and conducting any additional investigation and remediation;
2. On the Second and Fourth Claims for Relief, for a declaration and an order retaining jurisdiction to effectuate a declaration (a) that Third Party Defendants are liable for all costs incurred to respond to the release and/or threatened release of hazardous substances in the soil or groundwater in the SEMOU; and (b) that Third Party Defendants are responsible for conducting the necessary investigative and remedial actions relating to the release and/or threatened release of such hazardous substances; and

3. On all Claims for Relief:
   (a) For interest; and
   (b) For such other and further relief the Court may deem just and proper.

DATED: April 12, 2004

HELLER EHRMAN WHITE & McAULIFFE LLP

By [Signature]

NICHOLAS W. van/ELSTYN

Attorneys for Third Party Plaintiff
AEROJET-GENERAL CORPORATION
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.
PARTIAL STATEMENT OF DECISION RE TRIAL PHASE III

3. A declaration that defendants are not entitled to return flows from State Water Project imported water.

4. A declaration that there is no right to recapture State Water Project water stored in the basin through in lieu recharge.

5. A declaration that there is no right to recapture State Water Project water stored in the basin through direct recharge (injection wells).

6. Injunctive relief to prevent the defendants from causing an overdraft by limiting their extractions based on any future diminution of surplus.

Cross-complainants are as follows:

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

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

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

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

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


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

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

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

The City of Santa Maria, et al. cross complains seeking declaratory and injunctive relief, requesting a determination that it has obtained prescriptive rights to the Basin water on the ground that the basin has been in overdraft for more than 5 years and that if pumping continues at the current rate the Basin water supply will be exhausted. Santa Maria claims it has acquired
prescriptive rights by pumping continuously since 1900. Other causes of action relate to
purported municipal priority under Water Code Section 106.5. Santa Maria also seeks a remedy
against Santa Maria Valley Water Conservation District for failure to exercise its duty to
regulate water use within the Basin, to recapture its right to return flows from imported water, to
establish its right to Twitchell Reservoir water, for an equitable apportionment of waters in the
Basin, and to enjoin waste by overlying owners.

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

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

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

If an underground water basin is in overdraft, an appropriator of water may acquire
priority rights if all the other elements of prescription are present. If the basin is not in overdraft,
but no surplus exists, the court may be required to intervene to establish the rights of the parties
seeking to use the water within the basin, or to protect it from overuse (even by overlying
landowners). A determination of overdraft or its absence assists the court in determining the
rights to the reasonable and beneficial use of the water within the basin when there are
competing claims to the use of the water by land owners or appropriators, or both. Because of
the emphasis the parties placed on the issue of prescriptive rights, the court directed that the
parties present evidence on the question of whether the Basin has been in overdraft in a separate
early phase of the trial. The trial on that phase commenced on October 8, 2003. Appearances of
counsel are set forth in the record.

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

Summary of Decision

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

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

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

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

**Burden of Proof**

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

While the Santa Maria Valley Water Conservation District is the Plaintiff in this case and
accordingly has the burden of proof on all issues raised by the complaint, the Appropriators bear
the burden of prove of all the elements of their prescriptive claims. The case law consistently
places the burden of proof upon the proponent of an adverse possession claim. (See, e.g., *Field-
Escandon v. DeMann* (1988) 204 Cal.App.3d 228, 235.) Cases involving prescriptive water-right
claims are particularly clear in this regard, holding that the proponent bears the burden
irrespective of whether prescription is asserted by the plaintiff in the complaint or by the

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

In attempting to gain prescriptive rights in the Basin, the Appropriators must do more than meet the usual “preponderance of the evidence” standard that applies in most civil cases. Prescription claims must be proved by clear and convincing evidence. (Weller v. Chavarria (1965) 233 Cal. App. 2d 234; Field-Escandon v. DeMann (1988) 204 Cal.App.3d 228, 235; Applegate v. Ota (1983) 146 Cal.App.3d 702, 708.)

Nature of the Evidence for Determining Overdraft

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

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

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

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

Appropriators’ Argument Concerning Calculation of Overdraft

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

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

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

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

While there may not be current manifestations of overdraft, it is possible, given population growth, agricultural and industrial changes, that the Valley is at risk of being in
overdraft in the future. During the entire historical period presented populations increased within
the Valley and water use changed in a variety of ways. There has been a shift in some areas to
urban uses and away from agriculture. The nature of the agricultural uses has changed as well.
The type of irrigation used by farmers has become more efficient and less water is needed with
more efficient uses of water. But there has also been an increase in agriculture in the Valley in
substantial numbers. More of such changes will occur and it is important to both present
generations as well was future generations that the water resources within the Basin be managed
prudently. Absent actual physical evidence of overdraft, a determination of safe yield is the sine
qua non to the court determining whether future extractions from the Basin exceed safe levels
either annually or over the long-term; without establishing the “bench mark” of safe yield the
court could not fashion the relief the parties seek in future phases of this case or fully adjudicate
their rights inter se, nor could the court be confident of the proper management of the Basin in the
future, upon which the value of any such rights directly depends. All of these things are
important reasons for the court to determine the safe yield of the Basin.

The Appropriators also contend that some sources of recharge should be excluded from
the Basin’s safe yield. Except for the determination of how dependable a source might be,¹ the
source of water recharging a basin should not generally be material to a determination of
whether the Basin is in hydrologic overdraft. If the court were to exclude Twitchell, Lopez, and
the California Water Project imported water in determining whether there is an overdraft, the
court would be looking at the Basin in a hypothetical sense² as opposed to whether there has
been real depletion of the water supply in the Basin. Because prescriptive-right claims turn on
the assertion that a Landowner should have known that the claimant was improperly interfering
with the Landowners’ rights, it is the physical reality that the Landowner can observe that is key
to determining whether the facts show that prescription has occurred. Landowners cite City of

Los Angeles v. the City of San Fernando (1975) 14 Cal. 3d 199, in support of their position that


² Hypothetical overdraft (or, as counsel for the City of Santa Maria contends, “legal overdraft”) may have no
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.
all sources of supply count in the assessment of overdraft. The finding by the trial court in that case was based upon a referee’s finding of fact and the parties conceded the overdraft finding. The issues on appeal related to the allocation of water within the basin. It was clear there was an overdraft, with or without non-native water.

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

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

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

The Appropriators also contend that Twitchell Reservoir water is not a reliable source of

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3 Civil Code Section 1007.
recharge to the Basin because of sedimentation that potentially reduces the water conservation pool within the reservoir, and which will further reduce capacity over time. As that capacity is reduced, the amount of water available for recharge into the Basin would also be reduced.

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

Appropriators’ Expert Evidence

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

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

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

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.
Recalled to testify in January, Mr. Foreman testified that using Surfact in January he was successful in obtaining convergence but that he was still unable to achieve convergence using the Modflow model. It was his opinion that he did not need Modflow convergence so long as he had Surfact convergence. However, as Dr. Williams’s testimony established, and which the court finds credible, convergence with Surfact is only valid if convergence is also obtained inputting the same data used in Surfact into the Modflow model. That did not occur.

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

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

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

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

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

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

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

Furthermore, as noted above, Landowners also presented credible evidences of a water budget-confirmed independent change in storage calculation that showed a modest surplus in supply over a reasonable base period. The court therefore concludes based on all the evidence that the Basin is not, and has not been, in overdraft. This conclusion disposes of the Appropriators’ prescriptive-right claims based on a condition of overdraft. While actual physical evidence of overdraft is not necessary to a finding that there is overdraft in the Basin, such
evidence may have provided some element of credibility to the Appropriators’ “water budget”
analysis; however, none was presented.

Sub-Areas

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

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

DATED: ______________________

HON. JACK KOMAR
Judge of the Superior Court
In some groundwater basins in California, the land owners or other parties turn to the courts to settle disputes over how much groundwater can rightfully be extracted by each land owner. The courts study the available data to arrive at an equitable distribution of the groundwater that is available each year. This court-directed process can be lengthy and costly, although some of these cases have been resolved with a court-approved negotiated settlement, called a stipulated judgment. Unlike overlying and non-overlying rights to groundwater, such decisions guarantee each party to the decision a proportionate share of the groundwater that is available each year.

In these adjudicated groundwater basins (see pages two and three), the court appoints Watermasters to oversee the court judgment. In 14 of these basins the court judgment limits the amount of groundwater that can be extracted by all parties to the judgment. The basin boundaries are also defined by the court and generally do not include an entire basin as defined in DWR Bulletins 118 and 118-80. Water users in Santa Margarita River watershed are required to report the amount of surface water and groundwater they use, but groundwater extraction is not restricted. Puente Narrows is an addendum to the Main San Gabriel adjudication that requires a minimum underflow from Puente Basin to Main San Gabriel Basin of 588 acre feet per year.

(continued on page 4)
<table>
<thead>
<tr>
<th>Court Name</th>
<th>Filed in court</th>
<th>Final Decision</th>
<th>Watermaster</th>
</tr>
</thead>
<tbody>
<tr>
<td>1—Scott River Stream System</td>
<td>1970</td>
<td>1980</td>
<td>2 local irrigation districts</td>
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<td>3—Central Basin</td>
<td>1962</td>
<td>1965</td>
<td>DWR—Southern District</td>
</tr>
<tr>
<td>4—West Coast Basin</td>
<td>1946</td>
<td>1961</td>
<td>DWR—Southern District</td>
</tr>
<tr>
<td>5—Upper Los Angeles River Area</td>
<td>1955</td>
<td>1979</td>
<td>An individual hydrologist appointed by Superior Court</td>
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<td>6—Raymond Basin</td>
<td>1937</td>
<td>1944</td>
<td>Raymond Basin Management Board</td>
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<td>7—Main San Gabriel Basin Puente Narrows, Addendum to Main San Gabriel Basin decision</td>
<td>1968</td>
<td>1973</td>
<td>9-Member Board elected from water purveyors and water districts</td>
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<td></td>
<td>1972</td>
<td>1972</td>
<td>2 consulting engineers</td>
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<td>8—Puente</td>
<td>1985</td>
<td>1985</td>
<td>3 consultants</td>
</tr>
<tr>
<td>9—Cummings Basin</td>
<td>1972</td>
<td>1972</td>
<td>Tehachapi-Cummings County Water District</td>
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<td>10—Tehachapi Basin</td>
<td>1973</td>
<td>1973</td>
<td>Tehachapi-Cummings County Water District</td>
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<td>12—Warren Valley Basin</td>
<td>1976</td>
<td>1977</td>
<td>Hi-Desert Water District</td>
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<tr>
<td>13—Chino Basin</td>
<td>1978</td>
<td>1978</td>
<td>5 people, Chino Basin Municipal Water District</td>
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<tr>
<td>14—Cucamonga Basin</td>
<td></td>
<td></td>
<td>Not yet appointed, operated as part of Chino Basin</td>
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<tr>
<td>15—San Bernardino Basin Area</td>
<td>1963</td>
<td>1969</td>
<td>One representative each from Western Municipal Water District of Riverside &amp; San Bernardino Valley Municipal Water District</td>
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<tr>
<td>16—Santa Margarita River Watershed</td>
<td>1951</td>
<td>1966</td>
<td>U.S. District Court appointee</td>
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## Relationship to DWR Bulletin 118-80

### Basins Name; County

<table>
<thead>
<tr>
<th>No.</th>
<th>Basin Name; County</th>
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<tbody>
<tr>
<td>1-5</td>
<td>Scott River Valley; Siskiyou</td>
</tr>
<tr>
<td>4-4</td>
<td>Sub-basin of Santa Clara River, Ventura Couty</td>
</tr>
<tr>
<td>4-11</td>
<td>Northeast part of Coastal Plain of Los Angeles County Basin; Los Angeles</td>
</tr>
<tr>
<td>4-11</td>
<td>Southwest part of Coastal Plain of Los Angeles County Basin; Los Angeles</td>
</tr>
<tr>
<td>4-12</td>
<td>San Fernando Valley Basin(entire watershed); Los Angeles</td>
</tr>
<tr>
<td>4-13</td>
<td>Northwest part of San Gabriel Valley Basin; Los Angeles</td>
</tr>
<tr>
<td>4-13</td>
<td>San Gabriel Valley Basin, excluding Raymond Basin; Los Angeles</td>
</tr>
<tr>
<td>4-13</td>
<td>San Gabriel Valley Basin, excluding Raymond Basin; Los Angeles</td>
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<tr>
<td>5-2</td>
<td>Cummings Valley Basin; Kern</td>
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<tr>
<td>5-28, 6-45</td>
<td>Tehachapi Valley West Basin and Tehachapi Valley East Basin; Kern</td>
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<tr>
<td>6-40, 6-41, 6-42</td>
<td>Lower, Middle &amp; Upper Mojave River Valley Basins; San Bernardino</td>
</tr>
<tr>
<td>7-12</td>
<td>Part of Warren Valley Basin; San Bernardino</td>
</tr>
<tr>
<td>8-2</td>
<td>Northwest part of Upper Santa Ana Valley Basin; San Bernardino and Riverside</td>
</tr>
<tr>
<td>8-2</td>
<td>North central part of Upper Santa Ana Valley Basin; San Bernardino</td>
</tr>
<tr>
<td>8-2</td>
<td>Northeast part of Upper Santa Ana Basin; San Bernardino and Riverside</td>
</tr>
<tr>
<td>9-4, 9-5, 9-6</td>
<td>The entire Santa Margarita River watershed, including three groundwater basins: Santa Margarita Valley, Temecula Valley and Cahuilla Valley Basins; San Diego and Riverside.</td>
</tr>
</tbody>
</table>

1. In Bulletin 118-80, Cahuilla Valley (9-6) is spelled differently.

This table (pages two and three) lists the court’s name for the adjudicated portion of the groundwater basin first, followed by the Watermaster and the basin name and number used in DWR's Bulletins 118 and 118-80.

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**Locations of Adjudicated Groundwater Basins in California.**

The numbers on this map indicate the locations of adjudicated groundwater basins in California. They correspond to the numbers by the court name for the adjudicated basins listed in the first column on page two.
For most basins, the court has defined a fixed value for the safe yield. Extraction may exceed this value during some years as a part of the operating range that is allowed in the judgment. Adjudicated groundwater basins in California, their appointed Watermasters, the year the cases were filed, and the year the decision became final are shown in the table on pages two and three. The court’s name for the adjudicated portion of the basin is listed first, followed by the basin name used in DWR Bulletins 118 and 118-80.

Although adjudication of groundwater basins has resulted in a reduction of the amount of groundwater that is extracted, the total amount of water consumed has continued to increase. As a result, agencies in most adjudicated basins have imported surface water or are looking for water to import to meet the increased demand.

The original court decisions provided Watermasters with the authority to regulate extraction of the **quantity** of groundwater; however, they omitted authority to regulate extraction to protect water **quality** or to prevent the spread of contaminants in the groundwater. Because water quantity and water quality are inseparable, Watermasters are recognizing that they must also manage for quality. The Watermaster for Main San Gabriel Basin returned to the court in 1990 asking for authority to limit extractions to help prevent the spread of contaminants and to expedite remediation. The court granted that authority and in 1991 approved Main San Gabriel Basin Watermaster’s regulations for implementing such authority. Similar water quality authority was granted to the Upper Los Angeles River Area Watermaster in 1993.

Adjudication of a groundwater basin is one method of regulating groundwater extraction and allocating costs of replenishment. The Legislature has created ten groundwater management agencies that can pass ordinances to regulate groundwater extraction and has authorized some groundwater replenishment fees in 22 other types of water agencies. This authority is discussed in the California State Water Code. A detailed discussion of groundwater management agencies is contained in *Water Facts, Number 4, Groundwater Management Districts or Agencies in California*.

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**Where do you get more information?**

For further information on groundwater management in California, contact any one of the following California Department of Water Resources' offices:

**Northern District**
2440 Main Street
Red Bluff, CA 96080

**Southern District**
770 Fairmont Avenue
P.O. Box 29068 (91209-9068)
Glendale, CA 91203-1035

**Central District**
3251 "S" Street
Sacramento, CA 95816-7017

**San Joaquin District**
3374 E. Shields Avenue
Fresno, CA 93726

**Division of Local Assistance**
1020—9th Street
P.O. Box 942836 (94236-0001)
Sacramento, CA 95814

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