

WRAC Update on Santa Maria Basin 5/1/13, John Snyder

Groundwater Case History:

At what point is pumping illegal, requiring landowners to sue for an injunction to curtail purveyor pumping to avoid prescription?

Case evidence

Scalminini "Perennial yield" (a number less than the maximum safe yield) (Exhibit 1-55, 1-57)
121,600 AF/Y pumping (171,200 AF/Y Recharge, with 49,000 AF/Y going to the ocean)

Williams "Native Yield" before Twitchell and Lopez (Exhibit F-10)
60,000 AF/Y (Does not account for water going to ocean)

Appeal Court was asked to clarify which was the limit used:

There answer referring to the much lower Williams number: 'extractions had substantially exceeded the "native yield."'

The **Supreme Court declined to review** the safe yield/Native Yield issue making the Appeal decision a "final Judgment(2)".

With the Supreme Court decline the Appeal court sent there "final Judgment(2)" **Back for remand in the Superior Court** with instructions to modify the first "final judgment(1)"

"As to of[sic] those appellants that pleaded quiet title causes of action, **the court shall declare their overlying rights to native groundwater prior to the rights of all appropriators** less the amount to which the City of Santa Maria and Golden State Water Company are entitled pursuant to their prescriptive rights and shall reconsider, if necessary, the prevailing party determination and allocation of costs.

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

See Remittitur <http://www.scefilings.org/document/document.jsp?documentId=79948>

There was a Superior Court hearing on 4/26 on the remand issue.

See <http://www.scefilings.org/document/document.jsp?documentId=79964>

It was pointed out that the deadline for appeal to the federal court had not passed.

The Judge notified the parties that the original Judge (Komar) who had retired had asked to be put back on the case, there was not agreement on bring Komar back. See <http://www.scefilings.org/document/servlink.jsp?filedocId=98656>

A new hearing has been set for 5/24/13 to continue with the modification of the first "Final Judgment(1)"

The Grover Beach, Arroyo Grande and Oceano of the Northern Cities filed with the clerk a:
“SUPPLEMENTAL CASE MANAGEMENT STATEMENT RE NIPOMO MESA
OVERDRAFT” See <http://www.scefiling.org/document/document.jsp?documentId=79943>

The document had not been read by the judge. But it included the following statements”

“While this case was on appeal, the Northern Cities learned that the Nipomo Mesa **overdraft** harms not only water supplies in the Nipomo Mesa Management Area ("NMMA"), but that it also had eliminated the historical groundwater subsurface inflow from the NMMA to the Northern Cities Management Area ("NCMA") of approximately 1,300 acre-feet per year.”

“NCSO is now trying to fund and construct Phase 1 of the pipeline project, which would **import only** approximately **650 acre-feet** per year — roughly 10% of the Nipomo Mesa overdraft (approximately 6,000 acre-feet per year) — **far from what is needed to cure the problem.** And to our knowledge, no Mesa parties other than NCSO are taking any action to cure the overdraft.”

“**Northern Cities are not asking the Court to take any action.** Instead, they have asked the public water suppliers in the Nipomo Mesa to negotiate in good faith”

On the settlement track:

After the end of the hearing, Lawyer for NCSO, Northern, Santa Maria, Woodlands and GSWC went in to a closed room and had a secret meeting on the issue.

The Northern Cities secret Technical Committee filed there report to the court clerk with no request for review by the court. See <http://www.scefiling.org/document/servlink.jsp?filedocId=98637>

The Nipomo Mesa secret Technical Committee filed there report to the court clerk with no request for review by the court. See <http://www.scefiling.org/document/servlink.jsp?filedocId=98647>

On the real Court track:

The “Final” “Final Judgment” must issue before the stay on appeal ends.

Then real action can be taken to determine if the extent of the Northern claimed “overdraft” and who legally will have to cut back pumping (or a pay for a solution that is equivalent to that pumping cut back).