

**Litigation?
Been there, done that.**



**Whiskey's for drinkin'
(You know the rest.....)**



California's Curious Water Law

Caveat Professor!

California's Constitutional water law < the Gold Rush.

"First in time, first in right."

From this evolved water rights found in only one other US state.

(Texas, of course.)

Water may be "commons" belonging to the people of the State, but "usufructory rights" means that overlying users have unlimited pumping rights so long as their use is (very loosely) "reasonable & beneficial".

"Overlying users": Agriculture, mutual water companies, residential wells.

"Purveyors" have secondary rights: Cities, CSDs, the County.

Become Familiar with *Mojave*

Many believed that California's antiquated water laws were out of date, that any sensible challenge would overturn things and make water rights "fairer", a return to the "commons".

CITY OF BARSTOW et al.,

Plaintiffs & Respondents

v.

MOJAVE WATER AGENCY et al.,

Cross-defendants and Appellants

August 21, 2000

A Perspective on How This Mess Started

Twitchell Dam built 1959: upper half--flood control;
lower half--storage

Dam became silted up, lost ~50% capacity

City of Santa Maria did not want to be alone paying for the "fix"

[Cost estimated in 1998: \$5M in first year; \$1M yearly after that

Since farmers in the Santa Maria Valley benefitted from the recharge, they should help pay.

The farmers declined. (They were "overlying users" and thus entitled to the water anyway.)

What Really Started This Mess

Depending on how SWP water was used, importers could gain, in the first ten years of importation:

- prescriptive rights in excess of 30,000 afy
- nearly 175,000 af of water “banked” in the basin
- “right” to recapture nearly 85,000 af of return flow

The Santa Maria Ground-Water Basin



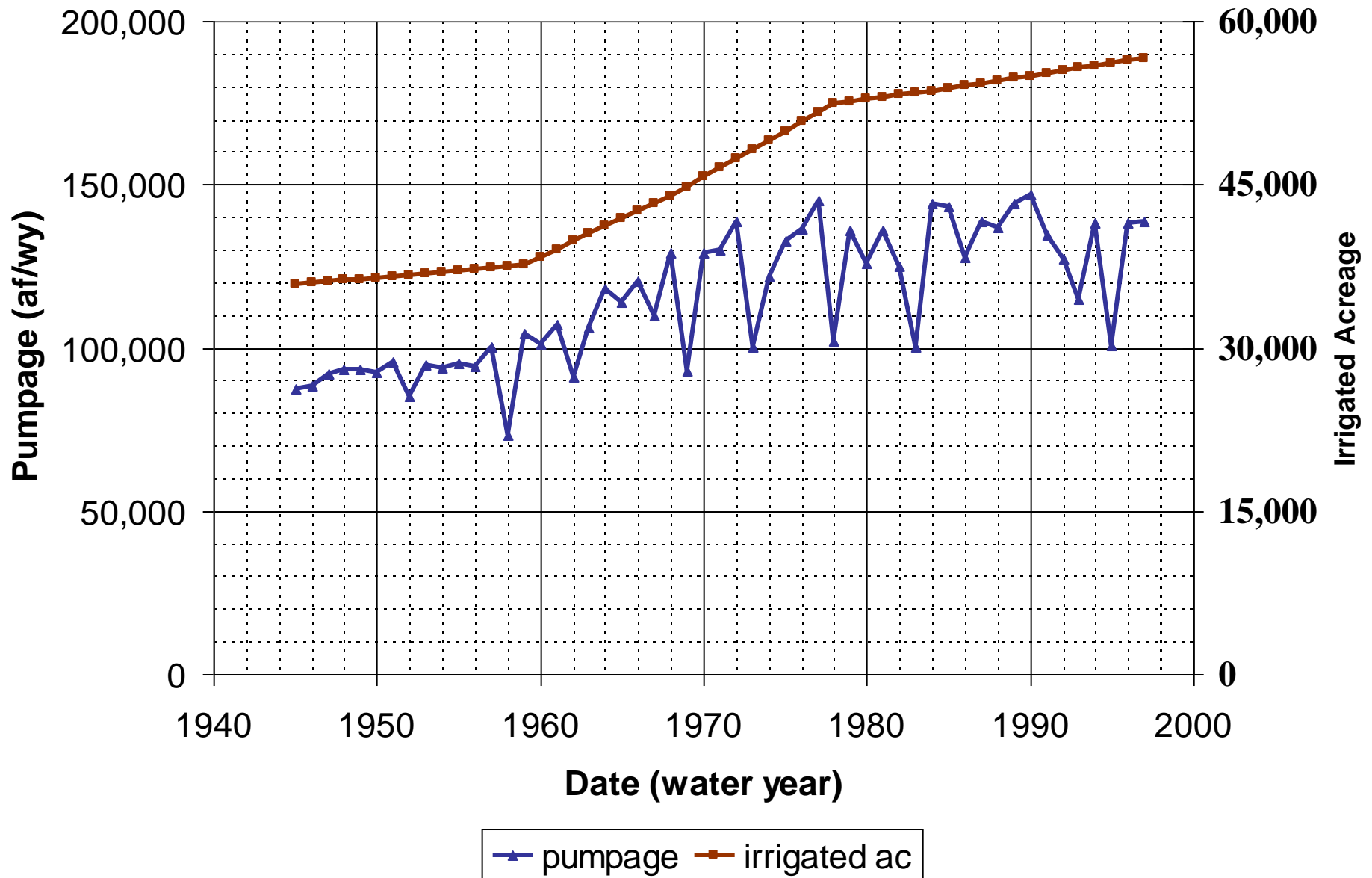
Undisputed Background Facts

- Seems like there were none
- Coastal ground-water basin
- Predominately agricultural land use
 - Nearly 60,000 acres (infrequently mapped)
 - 120,000 to 150,000 afy (all estimated)
- Increasing suburbanization
 - 32,000 afy (all metered)

Undisputed Background Facts, *cont.*

- Multiple historical ground-water fluctuations
- Three notable water augmentation efforts
 - Twitchell Reservoir (1959)
 - Lopez Reservoir (1967)
 - State Water Project (1997)
- Sedimentation of dead storage in Twitchell Reservoir
- Installation of coastal ground-water monitoring (1970)

Irrigated Acreage and Pumpage Santa Maria Basin



Suits & Countersuits Followed

- City of Santa Maria made prescriptive rights claims and the farmers sued.
- Santa Maria Valley Water Conservation District,
Plaintiff

vs.

City of Santa Maria, et al., Defendants
and Related Cross-Actions

What the Court Decided Regarding Overdraft in Santa Maria

- Overdraft is prerequisite to potential prescriptive rights
- Law defines “overdraft” as extractions in excess of safe yield which will lead to:
 - depletion of the water supply
 - permanent lowering of the water table

What the Court Decided Initially Regarding Overdraft in Santa Maria, *cont.*

- Overdraft can be physically observed
 - declining water levels
 - seawater intrusion
 - degrading water quality
 - land subsidence

What the Court Decided Initially Regarding Overdraft in Santa Maria, *cont.*

- Imported and managed waters are part of the water supply for assessing basin conditions
- Reliability of supplemental water is a factor
- Despite sedimentation (of just dead storage), Twitchell Reservoir has been a reliable supplemental water supply

What the Court Decided Initially Regarding Overdraft, *cont.*

- None of the indicators of overdraft are present
- All the physical evidence is to the contrary (of overdraft)
- To the extent that inputs to a model are estimates, the conclusions are also only estimates, with a substantial margin of error
- Based on all sources of recharge, the Santa Maria Basin is not in overdraft.

Santa Maria

Trial Court's Phase III 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.” (p.4)

“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 with the basin.” (p.7)

What the Court Subsequently Decided

Court reanalyzed the same evidence and concluded that historical declines, if long enough and despite subsequent recovery, constituted overdraft

i.e. drought (if long enough) can be overdraft

Court itself compared historical pumping to natural recharge (**not** “natural” or “native” safe yield) and concluded overdraft

Court assigned “prescriptive” rights to some historical municipal pumping, but not to others

What the Court Subsequently Decided *cont.*

Court concluded that local conservation reservoir had lost **yield** due to sedimentation of dead pool storage

Court allowed “self help” to protect rights while, at the same time, allowing prescriptive pumping to usurp rights – cumulative “rights” exceed actual amount of water

Conclusions considered to be “unrebutted” (but all substantial opponents had settled out of the adjudication based on the prior decision of no overdraft)

Stipulated Settlement

All purveyors and many farmers and single families with wells negotiated a settlement which the Court incorporated in its final ruling. (I.e., we created it, but it's not "ours" any longer. It's a thing of the Court.)

Farmers and other "overlying users" can continue to pump equal to (and 10% more) – historic high pumping. (Pumping volumes, if ag is converted to residential use, go to the "pool" for other overlying users.)

If long-term drought causes significant drop in water table, purveyors must cut back. Overlying uses not required to cut back until conditions are grave. Then they will cut back only among themselves.

Basin has three (3) management areas, with annual reports.

Summary Thoughts on Adjudication

Expansive (physical area and scope of issues)

Time Consuming (measure in decades)

Loss of Local Control (attorneys and technical experts)

Expensive (very) (~\$5M for Santa Maria, ~\$3M NCSD)

Asks a Lay Person (Judge) to Decide/Resolve Challenging Technical Issues

Produces a “Physical Solution” that May or May Not Resolve Original Adjudication Objectives

Establishes Administration to Implement Physical Solution, e.g. Watermaster (forever)

Fast Track.... NOT!

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10 WATER CONSERVATION DISTRICT

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN LUIS OBISPO

No. **CV 080973**

13 SANTA MARIA VALLEY WATER
14 CONSERVATION DISTRICT, a public
15 entity,

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF
(CCP §§ 26, 1060)**

16 Plaintiff,

17 v.

18 CITY OF SANTA MARIA, a municipal
19 corporation; SOUTHERN CALIFORNIA
20 WATER COMPANY, a California
21 corporation; and CITY OF GUADALUPE,
22 a municipal corporation; DOES 1 through
23 3,000 inclusive,

FAST TRACK

24 Defendants.

25 Plaintiff SANTA MARIA VALLEY WATER CONSERVATION DISTRICT
26 (hereinafter "DISTRICT") alleges as follows:

27 **I. JURISDICTION AND VENUE**

28 1. This Court has jurisdiction over this action pursuant to Code of Civil
Procedure Sections 526 and 1060.

2. Venue is proper in this Court because the water and real property which
are the subject of this action are located in part within the County of San Luis Obispo.

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