6:30 PM – CONVENE REGULAR MEETING

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION – Pat Sheean

ROLL CALL  Councilmembers Steve Gregory, John Hamon, Fred Strong, Jim Reed, and Mayor Steven Martin

STAFF INTRODUCTIONS

PRESENTATIONS

1. Drought Conservation Progress Report
   D. McKinley, Director of Public Works

   Director McKinley spoke about ongoing water conservation efforts.

PUBLIC COMMENTS

This is the time the public may address the Council on items other than those scheduled on the agenda.

- Karl Hansen spoke about water issues at his housing area.
- Laura Herron spoke about the “MASH” event held to support and help homeless people.
- Lynda Holt introduced Brian Morales who spoke as a Youth Commissioner.
- Heather Stephenson and Linda Holt spoke about the Library “Book Plates” event.
- Cindy Steinbeck spoke about water rights.

AGENDA ITEMS TO BE DEFERRED (NONE)

PUBLIC HEARINGS

2. Water Services – Proposed Rate Increase
   D. McKinley, Director of Public Works

   For City Council to introduce proposed water rate increases and authorize customer notification.

   Mayor Martin opened the public hearing. Speaking from the public were Sheila Healy, Sally Reynolds, Karl Hansen, Pat Sheean, Gary Duniven and Dale Gustin. There were no other comments either written or oral, and the public discussion was closed.

   A motion was made by Councilman Gregory and seconded by Councilman Strong to adopt Resolution No. 15-135 authorizing initiation of the Proposition 218 (Article XIIID of the California Constitution) procedures and instruct staff to send out public notices regarding the proposed water rate structure/increase.

   Motion passed by the following roll call vote:
COUNCIL AGENDA 11-03-2015

AYES:    Gregory, Strong, Hamon, Reed, Martin
NOES:    
ABSTAIN: 
ABSENT:    

CONSENT CALENDAR
ITEMS ON THE CONSENT CALENDAR ARE CONSIDERED ROUTINE, NOT REQUIRING SEPARATE DISCUSSION.

3. Approve City Council Minutes from 10/17/15 and 10/20/15
   D. Fansler, City Clerk

4. Approve Warrant Registers
   J. Throop, Director of Administrative Services

5. Advisory Body Minutes
   Airport Advisory Committee (8/27/15)
   Senior Citizen Advisory Committee (9/14/15)

   R. Burton, Police Chief

7. Resolution 15-136 Appointing members to the Supplemental Tax Oversight Committee
   D. McKinley, Director of Public Works

PUBLIC COMMENT - NONE
ROLL CALL VOTE

Consent Calendar items 3 - 7 were approved on a single motion by Councilman Strong and seconded by Councilman Hamon.

Motion passed by the following roll call vote:

AYES:    Strong, Hamon, Gregory, Reed, Martin
NOES:    
ABSTAIN: 
ABSENT:    

DISCUSSION

8. Environmental Enhancement and Mitigation Program (EEMP) Grant
   D. McKinley, Director of Public Works
   For the City Council to accept an EEMP Grant, in the amount of $500,000; adopt a project budget and authorize the City Manager to engage the services of the Wallace Group to perform final design.

   Mayor Martin opened the public discussion. Speaking from the public was Dale Gustin. There were no other comments either written or oral, and the public discussion was closed.

   A motion was made by Councilman Hamon and seconded by Councilman Strong to adopt Resolution 15-137 to:
   1. Accept the $500,000 EEMP Grant
   2. Adjust budget no. (2139101-54520-X0008), for an additional $500,000.
   3. Authorize the City Manager to engage the services of Wallace Group, in the amount of $80,000, to prepare Plans, Specifications and Estimates (PS&E).

   Motion passed by the following roll call vote:

   AYES:    Hamon, Strong, Gregory, Reed, Martin
   NOES:    
   ABSTAIN: 
   ABSENT:    

9. Oak Tree Removal – Kleck Road (Berry)
   W. Frace, Director of Community Development
   For the City Council to consider a request by Margaret Holstein, on behalf of Ron Berry, to remove four oak trees in conjunction with the development of two vacant lots within Tract 2805.
   Councilman Reed removed himself from the room due to conflict of interest.
Mayor Martin opened the public discussion. Speaking from the public were Ron Berry, Dale Gustin, Sally Reynolds and Margaret Holstine. There were no other comments either written or oral, and the public discussion was closed.

ROLL CALL VOTE #1

A motion was made by Councilman Gregory and seconded by Councilman Hamon and failed to approve OTR 15-004 for Lot 5, which would have allowed for the removal of one 24-inch Blue oak tree based on the tree having structural problems, and, one 14-inch Blue oak tree based on allowing the home to be constructed.

Motion failed and no action was taken due to a tie roll call vote:

AYES: Gregory, Hamon
NOES: Strong, Martin
ABSTAIN: Reed
ABSENT:

ROLL CALL VOTE #2

A motion was made by Councilman Hamon and seconded by Councilman Strong to deny OTR 15-008 for Lot 6, which would’ve allowed for the removal of one 25-inch multi-trunk Blue oak tree and one 17-inch Blue oak tree.

Motion passed by the following roll call vote:

AYES: Hamon, Strong, Martin
NOES: Gregory
ABSTAIN: Reed
ABSENT:

Councilman Reed resumed his seat.

COUNCIL BUSINESS & COMMITTEE REPORTS

10. Current Council Committee Activities Reports (if any).

Councilmen and the mayor reported on committee and other activities.

ADJOURNMENT OF REGULAR MEETING

A motion was made by Councilman Hamon and seconded by Councilman Gregory to adjourn the regular meeting.

Motion passed by the following voice vote:

AYES: Hamon, Gregory, Strong, Reed, Martin

ADJOURNMENT OF REGULAR MEETING AT 8:12PM TO:

- PUBLIC WORKSHOP FOR DEVELOPING VACATION RENTAL ORDINANCE – 6:00PM, WEDNESDAY, NOVEMBER 4, 2015 IN THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES.
- CENTRAL COAST ECONOMIC FORECAST – 7:30AM ON FRIDAY, NOVEMBER 6, 2015 AT THE ALEX MADONNA EXPO CENTER, 100 MADONNA ROAD, SAN LUIS OBISPO.
- REGULAR PLANNING COMMISSION MEETING - 6:30PM ON TUESDAY, NOVEMBER 10, 2015 IN THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES.
- NATIONAL HOSPICE MONTH LUNCHEON – 12:00PM ON THURSDAY, NOVEMBER 12 AT THE EMBASSY SUITES, 333 MADONNA ROAD, SAN LUIS OBISPO, CA 93405
- LEAGUE OF CALIFORNIA CITIES – CHANNEL COUNTIES DIVISION MEETING – 6:00PM ON FRIDAY, NOVEMBER 13, 2015 AT LOS ROBLES GREENS BANQUET FACILITY, 299 S. MOORPARK ROAD, THOUSAND OAKS, CA, 91361
- REGULAR CITY COUNCIL MEETING - 6:30PM ON TUESDAY, NOVEMBER 17, 2015 IN THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET, PASO ROBLES.
Any writing or document pertaining to an open session item on this agenda which is distributed to a majority of the City Council after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review in the City Clerk's Office, 1000 Spring Street, Paso Robles, CA, during normal business hours, and may be posted on the City's web site at www.prcity.com/government/citycouncil/agendas.asp.

All persons desiring to speak on an agenda item are asked to fill out Speaker Information Cards and place them at the Staff Table prior to public discussion of that item. Each individual speaker will be limited to a presentation total of three (3) minutes per item.

AMERICANS WITH DISABILITIES ACT Any individual, who because of a disability needs special assistance to attend or participate in this meeting, may request assistance by contacting the City Clerk's Office (805) 237-3960. Whenever possible, requests should be made four (4) working days in advance of the meeting.
Re: Oak Tree Removal - Kleck Road (Berry) Council Meeting Agenda Item 9 11/3/15

Dear Mr. App,

We have many items of concern regarding the final development of Tract 2805. This tract was designed many years ago including lot configuration and approval. This was prior to the build out of the adjacent subdivision bought out of bankruptcy by Wathlen Castano. We have the last home in that original subdivision at 2011 Kleck. We tried to buy Lot one in #2805 so as to not have a new house just 10 feet from our property line but to no avail. There are only 2-3 new lots in #2805 that will allow construction without significant challenges. Oak trees are certainly one of the challenges to be considered. The tree ordinance is in place for a reason.

As to the Lot five request for the removal of two trees. One “24 inch Blue Oak tree” based on the tree having structural problems and one 14 inch (good health?) just because it is in the way. The majority of the trees on property could be said to have structural problems. They have been allowed to grow wild and un-kept for years. What is your Arborist assessment? How much effort was made to design the proposed “custom” homes around the existing trees, or did the architect even know the locations of the existing “Protected” trees.

As for Lot 6, a 25 inch and a 17 inch tree are just in the way. Again, what effort was made by the architect to design around the trees? The average size house is 25-2700 square feet with a one and two car garage. To achieve the square footage requires a two story structure in the majority of cases so far. Do You know what the square footage of the proposed houses is and how many garage spaces are being built on each lot?

The transition from the original tract into tract #2805 is very blunt. The road is narrower, only 24 feet down from 32 feet in front of our house, and only one sidewalk located on the North side. There is no sidewalk on the south side leaving the sidewalk in front of our house at 2011 Kleck Rd to just dump off into the front yard of the first house in the new development at 2009 kleck Rd. There is no median at all for the city to maintain (paid for by the property owners) on either side of the street in #2805.

In conclusion, my wife and I would like the council to know that we are not in favor of any oak trees being cut down. The property owner has other options. They can adjust the lay out of the house on the Lots, even add a third lot and a lot line adjustment to obtain the space they really need. We feel that the builder sold these lots with a set lot-building configuration that worked with the trees and they should ad hear to what was originally allowed by the approved development plan.

Sincerely,

Charles and Patti Youngclaus

Cc: Mr. Warren Frace, Community Development Director
   Mayor: Mr. Steven W. Martin
Under the PRIOR Agreement, the first step in the “PROCEDURE FOR TERMINATING AGREEMENT AND DECLARING BASIN TO BE IN OVERDRAFT” is for the Flood Control District to make “a determination based on published studies that the Basin is in a condition of Overdraft.”

During the July 21, 2015 Board of Supervisors’ hearing, Supervisor Bruce Gibson stated that “… the Paso Groundwater Basin is in overdraft, as is plainly indicated by the technical information….”

At the meeting last week, the Supervisors and Staff, who are the Flood Control District, repeatedly used the definition of Overdraft to justify the Ag Offsets that were enacted in the Paso Basin. Phrases that were used include: “overpumping,” “out of balance,” “outflows exceeding inflows,” “not replenishing more than is being taken out,” and “more groundwater is being pumped out of the PRGWB than it can sustainably yield over the historic average”—this last phrase is almost a textbook definition of overdraft. And, most importantly, Supervisor Gibson specifically used the word Overdraft 3 times to describe the situation in the Basin during the hearing.

It was also asserted that the recent models show that approximately 2,600 acre-feet more water is being pumped out than is going in on an average annual basis from 1981-2011, which is again a definition of Overdraft which would seem to be “based on published studies.”

Based on these statements, it would appear that the Board, who is the Flood Control District, has made a determination based on published studies that the Basin is in a condition of overdraft under Section 3.a of the PRIOR Agreement, which puts all the other Municipal Users on Notice. If this is NOT the case, the Board should clarify for the public, because that is exactly what it looks like.

It makes no difference that the Board’s Agenda did not have them sitting in their capacity as the Flood Control District for that hearing—the Board considers Flood Control District business at almost every regular BOS hearing.

The County is also a signatory to the PRIOR Agreement as a Municipal User. Section 3 of the PRIOR Agreement says that “No Municipal User may … take a position in any judicial or administrative proceeding that the Basin is in a condition of overdraft…” without following the procedure in the PRIOR Agreement. The way this is written, this would apply to any judicial proceeding, not just proceedings against other PRIOR signatories. And in its Amended Answer to the Quiet Title lawsuit filed September 14th, the County appears to take the position that the Basin is in Overdraft. Does this mean that the County is terminating the PRIOR Agreement?

Does the County as a Municipal User intend to hold a noticed public hearing as required by Section 3.b of PRIOR Agreement? If not, can the Board explain why not?

November 3, 2015 Cindy Steinbeck Paso Robles
IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE PETER H. KIRWAN, JUDGE

DEPARTMENT 1

STEINBECK VINEYARDS #1, LLC,
PLAINTIFF,

-VS-

COUNTY OF SAN LUIS OBISPO, ET AL,
DEFENDANT.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
AUGUST 28, 2015

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OFFICIAL COURT REPORTER: MELISSA CRAWFORD, CSR, RPR
CSR NO. 12288.

MELISSA B. CRAWFORD, RPR, CSR 12288
APPEARANCES:

FOR THE PLAINTIFF:  
JOE WERNER  
Attorney at Law

FOR THE DEFENDANT:  
JEFFREY DUNN  
Attorney at Law

ROBERT SAPERSTEIN  
Attorney at Law

WENDY WANG  
Attorney at Law

MICHAEL McMATHON  
Attorney at Law

JEFF BRILTZ  

RYAN BEZERRA  
Attorney at Law

ELIZABETH EWENS  
Attorney at Law
San Jose, California

August 28, 2015

PROCEEDINGS

THE COURT: All right, good morning, everyone.

Welcome to Department 1. This is our nine o'clock law and motion calendar. And as I typically do I'm going to make a couple preliminary comments and then we'll get right into the calendar. Number one, we do have a number of folks that are appearing by telephone this morning on court call. And I want to remind those of you that are appearing by phone today that, number one, when I call your case please state your full name and spell your last name for the record. We do have a court reporter here. She's taking everything down. And it will help her if you spell your last name. Number two, if you are appearing telephonically by court call, and as I said we have a number of folks that are this morning, and you want to address the Court for any reason, please make sure that before you speak you identify yourself. Often times when we have numerous counsel appearing on a case by phone and counsel doesn't identify themselves the record is not clear as to who's talking. So, please just identify yourself before you speak. That'll make for a clear record and that will benefit everyone.

There are a couple matters, the Steinbeck Vineyards being one, where I have numerous counsel appearing by telephone. And rather than running the risk of folks inadvertently talking over each other when they make appearances I will just do a quick roll call on the telephone. So, I'll go through the names on my court call calendar and you can just acknowledge that you're appearing and identify who you're appearing for when I do
All right, if you are here to address a tentative ruling, and there are a couple matters where the tentatives are being addressed, number one, I encourage you to be brief, to the point. Number two, please don't get up and restate or reargue what's already in your papers. Your papers have been reviewed. They've been considered. And it's really not effective or efficient to just get up and restate what's in your papers. If there's a point in the tentative that you take issue with, or you want to address the Court's attention to, I certainly encourage you to do that. But getting up and just simply restating what's already in your papers is probably not a good use of your time. All right, with all that said we'll get into calendar, the nine o'clock calendar.

(Whereupon, the calendar was called. The following is the portion of the transcript requested.)

THE COURT: Line 6 is the Steinbeck Vineyards versus County of San Luis Obispo, et al, matter. And what I'm going to do is I do have counsel appearing in court. So, I'm going to take those appearances first. And then I'll do a roll call of those folks that I believe are appearing by telephone. So, in court, counsel, can I get your appearance, please?

MR. WERNER: Good morning, Your Honor. Joe Werner for plaintiffs.

THE COURT: Okay.

MR. DUNN: Good morning, Your Honor. Jeffrey Dunn for the City of El Paso Robles, defendant.

MR. SAPERSTEIN: Good morning, Your Honor. Robert
Saperstein for Atascadero Mutual Water Company.

THE COURT: All right. Good morning. And on the telephone do I have Deborah Kollars?

MS. WANG: No. This is Wendy Wang appearing. Substituting in for Deborah Kollars.

THE COURT: Okay. And this is -- who are you appearing for?

MS. WANG: Oh, the City of Paso Robles.

THE COURT: And, again, can I get your last name? I didn't hear that.


THE COURT: Okay. All right, do I have Joseph Werner on the telephone? You're here. You're on my list. So, you're checked off. All right, do I have Mr. Zimmer, Richard Zimmer, on the telephone?

MR. WERNER: Your Honor, if I may? He's been having some telephone difficulties. He may have to call in late, or attempt to anyway.

THE COURT: Okay. All right. Are you from his office?

MR. WERNER: Yes, Your Honor.

THE COURT: Okay. You have authority to proceed if he does not?

MR. WERNER: Yes, Your Honor.

THE COURT: Okay. All right. All right, Michael McMahon?

MR. MCMAHON: Yes, Your Honor.

THE COURT: And who are you appearing for,
Mr. McMahon?

MR. MCMAHON: San Miguel Community Services District.

THE COURT: Okay. Do I have Jeff Briltz?

MR. BRILTZ: Yes, Your Honor, Jeff Briltz. Templeton Community Services District.

THE COURT: Okay. Ryan Bezerra?

MR. BEZERRA: Yes, Your Honor. Ryan Bezerra, attorney for Templeton Community Services District. Mr. Briltz is the district general manager.

THE COURT: Okay. Thank you. Elizabeth Ewens.

MS. EWENS: Good morning, Your Honor. For the County of San Luis Obispo and San Luis Obispo Flood Control Water Conservation District.

THE COURT: Okay. Thank you. Daniel McGee?

MR. MCGEE: Yes, Your Honor. Dan McGee on behalf of Robert Eidemiller, the plaintiff.

THE COURT: Okay. That is the extent of the names on my court call calendar. Is there anyone appearing telephonically whose name I did not call? Okay. Sounds like we have everyone. All right, so, before the Court there was a motion for judgment on the pleadings brought by plaintiff relative to some of the affirmative defenses raised by the respective defendants. There was also a motion in limine generally regarding issues relating to burdens of proof. The Court did post its tentative. The only call I was made aware of was Paso Robles called in and indicated they were going to address the tentative. So, I don't know if anyone else plans to address the tentative this morning. But that was the only call
that was brought to my attention. All right? So, for Paso Robles I have -- is it -- let's see. Who do I have for Paso Robles here? Ms. Wang?

MR. DUNN: And Mr. Dunn.

THE COURT: And Mr. Dunn, yeah. I'm looking through my court call. So, Mr. Dunn, I'll turn it over to you.

MR. DUNN: Thank you, Your Honor. Just want to address one single paragraph in the tentative.

THE COURT: Okay.

MR. DUNN: I'm not sure how to find it. On our printout it's maybe the sixth page. And it's in the middle of the page. The paragraph that begins, "Regarding San Miguel's fifth affirmative defense," and continues.

THE COURT: So, this relates to motion for judgment on the pleadings.

MR. DUNN: Yes, it does.

THE COURT: Okay. I've got it.

MR. DUNN: Okay. This paragraph concerns the affirmative defense of physical solution.

THE COURT: Right.

MR. DUNN: And just want to address the Court briefly on that. There's some authority that I'll provide to the Court. Basically it says that it's the duty of the courts to consider a physical solution in cases where there's a controversy between the parties. Just want to give the Court two cites. One is -- first one is City of Lodi.

THE COURT: Were these in the papers?

MR. DUNN: I don't believe they are. I do not believe
they were.

THE COURT: All right.

MR. DUNN: One is City of Lodi Versus East Bay Municipal Utilities District. It's a 1936 case. It's found at 7 Cal.2d 316. And the pin cite is 341. And then I'll get to the second case in a second. And there's just a short sentence in there on page 341. I'll just read it. It says, "Since the adoption of the 1928 constitutional amendment it is not only within the power, but it is also the duty of the trial court to admit evidence relating to possible physical solutions, and if none is satisfactory to suggest on its own motion such physical solution."

The second reference to the case I believe was in the papers. It's the City of Santa Maria versus Adam. It's the 2012 decision. And it's 211 Cal.App.4th at page 288. And the quote there is, "There is no requirement that there be an overdraft before the Court may impose a physical solution."

What we're arguing is that because it's the duty of the courts to consider the physical solution it is not dependent upon pleading an overdraft or prescription. It is, in our view, sufficient pleading just to make the request for a physical solution given the fact that we have this legal controversy between the parties, and also in the pleadings that there's an overdraft. So, on that affirmative defense issue alone in the tentative our position would be that there's no further pleading required other than to request the physical solution.

THE COURT: All right. Okay. All right. Do you want to respond?
MR. WERNER: Briefly, Your Honor. Both of those cases are actually discussed in the paperwork and in the briefings that were filed. I won't expand on the points in the papers very much except to say that those cases presented very different factual situations. This case, the quiet title action, presents a very narrow issue regarding the plaintiff's right to take groundwater. Those cases involved substantially broader allegations that are not existent here or not set forth in the answers. And, therefore, we would submit to the tentative on that particular affirmative defense.

THE COURT: Okay. All right. Is there any other aspect of the tentative that counsel wants to address at this point?

MR. WERNER: Yes, Your Honor. I'd actually like to make a couple points, if I may.

THE COURT: Okay. Did you notify opposing counsel that you were going to be arguing the tentative today?

MR. WERNER: I believe we just relied on the City's notification that oral argument would be happening. I've been traveling so I'm not certain if --

THE COURT: Yeah, it's helpful to the Court, and to everyone else, to give them a heads up if you're going to be addressing any part of the tentative. We do have everyone here. So, I'll consider whatever points you want to make, brief points you want to make. But, for future reference, even though someone may call in on one part, if you're going to address another part you need to let everyone know.

MR. WERNER: We will certainly do that in the future,
Your Honor.

THE COURT: All right.

MR. WERNER: Regarding the tentative as to the affirmative defense based on Article 10, Section 2, the so-called reasonable use affirmative defense, which is the only one that the tentative was to deny, defendants contend that the Tulare case requires plaintiffs to show that their use is reasonable. First, it bears noting that there are no factual allegations set forth in either the complaint or the answer to indicate what they're asserting. What use is allegedly unreasonable. All that's alleged is the bare factual conclusion that there is an unreasonable use. But we have no facts on which to proceed. So, as a matter of pleading that affirmative defense is insufficiently plead and the MJOP should be granted.

As a substantive matter, as I mentioned a moment ago, this quiet title action presents a very narrow issue of the plaintiff's -- the overlying plaintiff's right to capture groundwater. Tulare, the case on which this affirmative defense is based was very different in that it was a request for an injunction against pumping, which necessarily implicated the issue of does a surplus of water exist. Which, of course, then triggers the issue of reasonable use. So, that the use of water is quite distinct from the right to capture the groundwater.

This case only involves the right to capture the groundwater. And it's a basic, straightforward quiet title action. Prescription is not at issue. No injunction is at issue. In fact, whether there's a surplus or overdraft is not an issue at this point. Which is why Tulare specifically states
that the showing of reasonable use is necessary before issuing an injunction. That's very distinct from this case. So, the questions of use go to surplus or overdraft. They do not go to the appurtenant right of an overlying user to take groundwater. Of course if defendants are asserting an adverse claim that's their burden to prove. But that's not at issue in the complaint.

I also wanted to address the motion in limine. I don't know if you'd like to take comments on the reasonable use affirmative defense before I move on.

THE COURT: You know, I think you argued it in the papers. I understand your argument. But I think I'm -- you know, with respect to your argument I think I'm going to stand by my tentative on that. I think it's been properly pled. And I think this will likely be something that will be -- come out either through further discovery or even at trial. But I think for now I'm going to stand by my tentative on the reasonable use issue.

MR. WERNER: Okay. With regard to the motion in limine, defendant's argument, at least as I far as I understand it, is that it arises from this analogy to riparian rights. That because the riparian owner has to show certain characteristics of the property, being that it's contiguous with the stream that's within the watershed, etc., that that carries over to an overlying owner to show what exactly, you know, basin boundaries, things of that nature. The difference is that not all property in California is riparian. So, those cases are requiring the plaintiff to prove that it has -- that the right
to that stream exists. In other words, they have to prove
something about the nature of the property. In comparison, an
overlying owner, there is no special characteristic of the
property that needs to be shown before that property interest,
that appurtenant right exists. Every property in California is
overlying. It's of no importance whether it's overlying a
basin, whether it's overlying a different basin, or whether it's
overlying no basin at all, as with much of California.

THE COURT: Yeah. I don't disagree with what you're
saying. But where are you going with this? I mean what's your
argument?

MR. WERNER: The argument is that the burden should be
on defendants to prove any basin boundaries because that fact is
only relevant to an adverse claim that they may assert. If they
don't believe they're within same basin boundaries or if one of
the plaintiffs is outside of a basin entirely then they should
disclaim. That's the entire point of a quiet title action.
What plaintiffs are required to do is say I am an overlying land
owner and by virtue of my overlying land I have a right to the
groundwater. That shifts the burden.

THE COURT: But in this case you've sued a number of
defendants. And the allegation is that they're tapping into
your groundwater, right? That comes right out of the complaint.

MR. WERNER: Right. There's a slight difference in
that for a quiet title action it's not the plaintiff's burden to
show that defendants are tapping into the groundwater.

THE COURT: But then -- well, I don't know that I
agree with you on that and I'll tell you why. Is that you've
now sued them saying that there are conflicting claims, right?

And part of a quiet title process is to resolve the conflicting claims issues. What happens if they aren't tapping into your groundwater? They're probably not -- don't deserve to be in the case. So, there is a controversy if, in fact, you've proved that they're tapping into the same groundwater that you have an overlying right to. If they aren't then why should they still be in the case?

MR. WERNER: The element that's at issue and why that allegation is in the complaint is because in a quiet title action we simply have to allege that we believe they may have an adverse claim. Proving that adverse claim, proving that they're actually tapping into the same groundwater, that's their burden. In a quiet title action it's simply enough to say we believe there is controversy as to the title.

THE COURT: Okay. All right. So, I'm going to tell you this, that a quiet title action necessarily implies that there are conflicting claims. So, I think we're talking around each other a little bit. So, you've now sued these defendants saying that they are -- and I quoted the complaint in the tentative. But saying that they are basically tapping into -- and let me quote it. "Plaintiffs believe defendants pumped some amount of percolating groundwater from this percolating supply. And defendants claims -- claim rights to pump groundwater from the supply equal to or superior to the rights of plaintiffs."

So, if that's, in fact, the case, I think you've got to -- I think it's your burden to show -- you don't have to define the boundaries. You don't have to prove the boundaries of the
basin. But what you do have to prove is if they're tapping into the water that you have an overlying right to. Because if you don't prove that then arguably they shouldn't even be in this case. You're not going to get a quiet title judgment against them unless you can show that they somehow are interfering with your property rights. Do you follow me?

MR. WERNER: I think the point of departure for me is that if the facts bore out they are not in fact -- hydrologically distinct water is at issue between plaintiff A and defendant B, if that's the case what the Court just stated that they shouldn't be involved and there is no quiet title, I would disagree that if they're hydrologically distinct then as a matter of fact and as matter of law there should be quiet title because there is no adverse interest. So, as between those two parties with their hydrologically distinct water title clearly lies with the plaintiff and it's a simple matter. I believe the Court has mentioned something along those lines before that if one plaintiff were hydrologically distinct the case becomes very simple. Nobody in the case is claiming an adverse interest and quiet title is appropriate.

THE COURT: So, they're -- and I'm talking hypothetically here, so don't read too much into it. The allegation is either the defendants are appropriators of the water or they have a prescriptive right to the water or they're strangers. They don't access that water supply at all. So, what happens if they're complete strangers, meaning they're not tapping into that water? Can you still get a quiet title judgment against them?
MR. WERNER: Yes. The procedure for that, the quiet title action, would be for defendants to say we're strangers to this water and we're disclaiming any adverse interest. Therefore, we're out of the case.

THE COURT: Do you want to be heard on that?

MR. SAPERSTEIN: Yes, Your Honor. There is actually a third category of water right holder --

THE COURT: Oops. Did I -- overlying property rights.

Right. Right.

MR. SAPERSTEIN: And Atascadero Mutual Water Company is in that circumstance. So, here's the peculiar nature on the claim. And I can think of no circumstance in, not just California, in United States jurisprudence, where a defendant is brought into court and they somehow bear the burden of proving some fundamental piece of plaintiff's case to get out of the case. That's not the way the legal system works in American law. Plaintiffs have the burden of putting on a prima facie case suing another overlying owner and demonstrating that we have some common claim or not to the property to which they claim. We should have no burden of proving that prima facie factual predicates --

THE COURT: I think that's the gist of the tentative. But I do want to make it clear that don't read too much into the tentative. The tentative doesn't obligate you to define the basin boundaries. That's not what the tentative says. Tentative does say that you've got the burden of proving your quiet title claim which includes supporting the allegations in the complaint that defendants are tapping into or using the
supply of percolating water that your clients have an overlying right to. Once you've proven that then you've met your burden of proof.

MR. WERNER: Well, in terms of that allegation of the complaint --

MR. BEZERRA: Your Honor --

THE COURT: I'm sorry, do I have someone appearing by phone?

MR. BEZERRA: Yes, Your Honor. This is Ryan Bezerra for Templeton Community Services District. Just a few points. I signed the opposition to this motion. First, we were not given notice that this would be argued.

THE COURT: I understand that. I already addressed that and admonished counsel in the future to do it. But these are important issues. We have everybody here. We might as well have this discussion now.

MR. BEZERRA: Yes, Your Honor. I understand. Couple of additional points. This distinction, this alleged distinction between riparian and overlying rights was not raised in the papers. This is the first time we've heard this argument. And third, the one and only source of authority on which plaintiffs rely is the Santa Maria decision. And the tentative demonstrates how the Santa Maria decision actually supports the tentative. There is no other authority on which plaintiffs rely for their argument regarding their burden. There is a lot of authority, as the tentative recognized, in going the other way. But there simply is no authority whatsoever to support the plaintiff's position. Because Santa
Maria does not support the plaintiff's position as the tentative recognizes.

THE COURT: All right. All right. I need to wrap up in a couple minutes here because I do have other cases to hear. Any final comments?

MR. WERNER: If I may just address one statement from counsel. What we're asking in terms of the burden is not that defendants prove some part of plaintiff's case. Obviously I disagree regarding the interpretation of Santa Maria. But it stands for the proposition that a quiet title plaintiff need only prove it's title to the overlying land. We've done that. In terms of commonality of that groundwater, that's not an element of quiet title or of our title to the overlying land. That's an element of an adverse claim. And the point of a quiet title action is to force defendants to bring those out if they exist or disclaim them if they don't.

THE COURT: But should they even be in the case if they're not using the water?

MR. WERNER: If they're not, then again, they should disclaim and be out of the case.

THE COURT: But I think by virtue of the fact, and again I think we're agreeing to disagree a little bit here, but I want to make sure you understand where I'm coming from. The fact that you have sued them and made these allegations I think it's your burden of proof to support those allegations against them. It's not their burden, as I think Mr. Saperstein said, to affirmatively disprove what you've alleged. I think you've got the burden of proof as the plaintiff. And that was really kind
of the gist of the tentative. So, I understand your point. But
I think unless there's anything else I'm going to adopt the
tentative. All right? Okay.

MR. SAPERSTEIN: Your Honor, I'm primarily here to
understand what happens next. We have, ostensibly, a trial late
this year for basin boundaries. But if I understand the Court's

THE COURT: I had a feeling you were going to ask this
question. I think this helps clarify to some extent. You know,
I think it's clear now what the plaintiff's burden of proof is.
With respect to the basin boundaries, I think that relates
really more to prescriptive claims and things like that
possibly. But I am not holding the plaintiffs to a burden that
requires them to define the basin boundaries. All right?

MR. SAPERSTEIN: And if I heard Your Honor correctly
this morning, if the burden that you're describing plaintiffs
bear is to either prove or give up as to certain defendants that
were drawing water from a common hydrologically ground --

THE COURT: We've been talking about this since the
inception of this case is what defendants are rightfully in this
case. In other words, which defendants are truly using the
groundwater that underlies the numerous plaintiffs' property.
So, if there are defendants who -- and I don't know the answer
to that question. I don't even know if you know the answer to
that question. But if there are defendants who are truly not
doing that we need to flush that out. All right? All right.

MR. WERNER: Thank you, Your Honor.

MR. SAPERSTEIN: The expectation is that plaintiff
will put on that prima facie case and then defendants can choose whether they need to contest it or not?

THE COURT: Do you have a case management conference scheduled with me in the near future?

MR. SAPERSTEIN: No. We don't have anything other than the trial date.

THE COURT: Because, to some extent, your question is legitimate. It changes the landscape a little bit. And that's why I wanted this issue to get flushed out. I think it might make sense, just for purposes of clarity to everybody, that we have an interim CMC so that everybody's on the same page as to where we go.

THE CLERK: I show November 6th at 10:00 a.m.

THE COURT: Yeah, I want to do it sooner than that. I'm going to specially set another CMC. Does it work better for everybody in the afternoon?

MR. SAPERSTEIN: It is easier.

MR. DUNN: Yes, sir.

THE COURT: If I were to set it at 1:30 would that be better for everyone?

MR. WERNER: Typically, I believe so.

THE COURT: Yeah. I know you folks are traveling. Okay, let's set a further CMC in this case for September 30th. That's a Wednesday.

MR. SAPERSTEIN: Your Honor, I have both an appearance and a -- in a completely part of the state that day. That whole week also I'm supposed to be --

MR. BEZERRA: Yes, Your Honor. I'm out of the country actually. This is Ryan Bezerra for Templeton.

THE COURT: Yeah. Okay. I'm in trial the two prior weeks. So, that's -- those aren't great weeks for me. How about the week of October 5th? So, why don't we say October 7th at two o'clock.

MR. DUNN: Your Honor, the Antelope Valley adjudication is proceeding in a phase 6 trial that week. Judge Komar is travelling to Los Angeles to conduct that.

THE COURT: This is going to be tricky trying to coordinate everybody.

MR. DUNN: I mention it because it doesn't just impact me, it'll impact Mr. Zimmer and others.

THE COURT: Understood. I want to do this in the late September, early October, timeframe. And we're starting -- I'm here October 13th. Does that work?

MR. WERNER: I honestly can't speak to Mr. Zimmer's calendar. But I'm not aware of any particular --

THE COURT: Two o'clock, October 13th.

MR. DUNN: Yes, Your Honor.

THE COURT: Okay. All right. We'll specially set it for that time.

MS. EWENS: Your Honor?

THE COURT: Yes.

MS. EWENS: Your Honor, this is Elizabeth Ewens. The only intervening deadlines that we have between now and then are the expert disclosures, as well as expert depositions that are set right now to take place in October. Obviously it's going to
be difficult to designate experts if we are still trying to --

THE COURT: Well, I don't want to take things off the
track here, so to speak. I think you need to go forward with
those. I'm not going to cancel any deadlines or extend any
deadlines because we do have a trial date coming up. But I do
think in light of today's ruling it makes sense to have an
interim CMC so that we can discuss the further logistics of the
trial. It's probably not appropriate now because I've got a
number of other cases to call.

MR. SAPERSTEIN: Your Honor, what about early in
September? Does it work to do the week of the 8th?
THE COURT: I start a trial September 14th. So, I
could give you September 9th.

MR. WERNER: That date I know Rich -- sorry,
Mr. Zimmer, will not be available.

THE COURT: Okay. Let's go with the 13th. If you
folks can mutually work out a earlier date, contact Ms. Walker.
I'll make myself available. Okay? All right?

MR. DUNN: All right.

MS. EWENS: Thank you, Your Honor.

MR. SAPERSTEIN: Your Honor, we may only need a half
hour on the phone with the Court.

THE COURT: That's true. That's true. But, you know,
with the number of counsel and everybody's busy calendars it's
not -- we've taken a few shots at it. So, if you can work out a
date, contact Ms. Walker and she'll put it on my calendar.
Okay?

MR. DUNN: Thank you, Your Honor.
MR. WERNER: Thank you.
(Whereupon, this matter adjourned.)
---ooo---
STATE OF CALIFORNIA ) ss.
COUNTY OF SANTA CLARA )

I, MELISSA CRAWFORD, HEREBY CERTIFY:

That I was the duly appointed, qualified shorthand
reporter of said court in the above-entitled action taken on the
above-entitled date; that I reported the same in machine
shorthand and thereafter had the same transcribed through
computer-aided transcription as herein appears; and that the
foregoing typewritten pages contain a true and correct
transcript of the proceedings had in said matter at said time
and place to the best of my ability.

I further certify that I have complied with CCP
237(a)(2) in that all personal juror identifying information has
been redacted, if applicable.

DATED: SEPTEMBER 12, 2015

MELISSA CRAWFORD, CSR, RPR
CSR No. 12288

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