

Lawrence (Larry) Fuller
7935 Dusty Lane
Somis, CA 93066
805-386-4086

September 26, 2006



Fox Canyon Groundwater Management Agency
800 S. Victoria Ave.
Ventura, CA 93009

Attn: David Panaro, Jeff Pratt & Steve Bachman

Subj: Comments and concerns on the FCGWMA Management Plan.

Hi David,

I told you that I would put in writing some of my thoughts and concerns expressed in the 1st workshop. My research has led me to look at the management plan in the light of the State of California water case law especially the case CITY OF BARSTOW et al., v. MOJAVE WATER AGENCY (S071728) 21 August 2000. This case clarifies the Supreme Court of California's position on water rights. A summary of the Courts decisions can be found in Downey Brand Attorneys LLP document titled California Water Law & Policy Reporter- October 2000.

It is my understanding that the FCGWMA used the "equitable" (physical) concept for allocating pumping to all of the Fox Canyon aquifer pumps. This method of allocation is clearly a violation of the law, if I understand the California Supreme Court ruling cited above. The three levels of priority, as stated in the case law, are 1st Priority Overlying Owners, 2nd in priority are appropriators and 3rd are exporters (water transferred out of the immediate pumping area).

The clearest statement of this fact is found on page 29 starting with line 3. "We repeat the guiding principle: 'Under California law, "[p]roper **overlying use**,... is paramount, and the right of an **appropriator**, being limited to the amount of **surplus**, **must yield to that of the overlying owner** in the event of a shortage unless the appropriator has gained prescriptive rights through the taking of nonsurplus waters.'" [Citation.]' (*Hi-Desert County Water Dist. V. Blue Skies Country Club, Inc.*, *supra*, 23 Cal.App.4th 1723-1731, Thus, while the rights of all overlying owners in a ground water basin are correlative, and subject to cutbacks when the basin is over drafted, **overlying rights are superior to appropriative rights**. Here, the trial court did not attempt to determine the priority of water rights, and merely allocated pumping rights based on prior production. This approach elevates the rights of appropriators and those producing without any claim of right to the same status as the rights of riparins and overlying owners. The trial court erred in doing so."

It is my request that the FCGWMA board of directors DO NOT make any further pumping reductions until these legal issues can be resolved. The case law cited states that only the Court has the right to restrict our pumping. A little caution now could prevent law suits caused by not following the law. (page 54,61) The original allocation system did not take into consideration efficient use of water and therefore it was/is flawed. **The allocation should also consider the number of water sources available to a given property.** Some properties have water available via pipelines from major water suppliers while many properties are dependent on their wells as the only source of water. Small users, Coops and small M &I/Agriculture systems are not addressed specifically in Management Plan. In addition to this the FCGWMA board has no small operation representative on the board to insure that their interests and concerns will be heard.


Another issue that I talked about in the workshop was the FCGWMA's Board approval of CMWD application for injection/storage facilities in North Las Posas Groundwater Basin.

According to my understanding this letter opens the door for CMWD to acquire Fox Canyon Aquifer **prescriptive** pumping rights. The Board has already allowed the injection wells to be drilled and injection of imported water is progressing. It is imperative that CMWD be restricted **IN WRITING** that they will not be allowed to extract water outside of their injection field. The Board can not by letter change the California water laws regarding prescriptive water rights that can and will be developed if pumping is allowed outside of the injection site boundaries. See page two paragraph 4. end of 1st sentence....**OR IN THE NEAR VICINITY.** What constitutes "near"? One mile, five miles? It is a known fact that CMWD wants to pump Fox Canyon water to blend with their imported water. Overlying owner priority rights will be affected if this issue is not addressed before any extraction is started out side their injection field.

Another problem area with CMWD that was discussed, concerned the One for One or gallon for gallon of water pumped to be extracted. When I addressed this issue your engineer made light of my comments concerning both the wetting factor of the dry sands and the drift factor of the water moving through the aquifer. I have friends that are very knowledgeable in the field of both hydrology and geology. They state that anyone who knows anything about the Fox Canyon aquifer knows about the drift out through Hueneme Canyon and the losses of fluid due to wetting of a dry formation. I can only assume that CMWD is injecting into an area that is dry—water does not compress. David this is right down your alley. I know with your training you can do the calculations for both the wetting and the transfer function even if your engineer can't. The FCGWMA should not be providing free water to CMWD.

The Court case cited discussed in detail the effect of allowing a right by prescription to be developed. Please look into all of the FCGWM ordinances in the light of the rulings by the Court.

Sincerely,


Larry Fuller

Encl: Copies for

Mr. Jeff Pratt
Mr. Steve Bachman