



# CITY OF EL PASO DE ROBLES

*"The Pass of the Oaks"*

## CITY COUNCIL MINUTES

Tuesday, November 3, 2015

---

**Location: Paso Robles Library/City Hall Conference Center  
1000 Spring Street, Paso Robles**

**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

PLEASE REFRAIN FROM CELL PHONE USE DURING THE MEETING - PLEASE TURN RINGER OFF

### 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 XIID 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:

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)
6. [Proclamation – Records Support Personnel Proclamation 2015](#)  
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.

Submitted by:

  
Kristen Buxkemper, Deputy City Clerk

Approved: November 17, 2015

---

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](http://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.

---

Mr. James L. App  
City Manager, City of Paso Robles  
1000 Spring Street  
Paso Robles, Calif 93446

November 2, 2015

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.

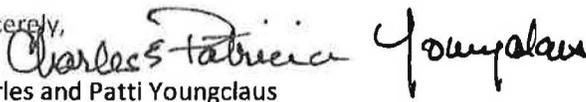
As to the Lot five request for the removal of two trees. One "24 inch Blue Oak tree" based on the tree having structural problems and one 14 inch (good health?) just because it is in the way. The majority of the trees on property could be said to have structural problems. They have been allowed to grow 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

CITY CL

NOV 02 2015

CITY OF PASO ROBLES

- 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 14<sup>th</sup>, 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

---oOo---

STEINBECK VINEYARDS #1, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
-VS-	)	NO. 1-14-CV-265039
	)	
COUNTY OF SAN LUIS OBISPO, ET AL,	)	
	)	
DEFENDANT.	)	

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
AUGUST 28, 2015

---oOo---

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A P P E A R A N C E S:

FOR THE PLAINTIFF:

JOE WERNER  
Attorney at Law

DANIEL MCGEE  
Attorney at Law

FOR THE DEFENDANT:

JEFFREY DUNN  
Attorney at Law

ROBERT SAPERSTEIN  
Attorney at Law

WENDY WANG  
Attorney at Law

MICHAEL MCMAHON  
Attorney at Law

JEFF BRILTZ

RYAN BEZERRA  
Attorney at Law

ELIZABETH EWENS  
Attorney at Law

1 San Jose, California

August 28, 2015

2 P R O C E E D I N G S

3 THE COURT: All right, good morning, everyone.

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

22 There are a couple matters, the Steinbeck Vineyards  
23 being one, where I have numerous counsel appearing by telephone.  
24 And rather than running the risk of folks inadvertently talking  
25 over each other when they make appearances I will just do a  
26 quick roll call on the telephone. So, I'll go through the names  
27 on my court call calendar and you can just acknowledge that  
28 you're appearing and identify who you're appearing for when I do

1 that.

2 All right, if you are here to address a tentative  
3 ruling, and there are a couple matters where the tentatives are  
4 being addressed, number one, I encourage you to be brief, to the  
5 point. Number two, please don't get up and restate or reargue  
6 what's already in your papers. Your papers have been reviewed.  
7 They've been considered. And it's really not effective or  
8 efficient to just get up and restate what's in your papers. If  
9 there's a point in the tentative that you take issue with, or  
10 you want to address the Court's attention to, I certainly  
11 encourage you to do that. But getting up and just simply  
12 restating what's already in your papers is probably not a good  
13 use of your time. All right, with all that said we'll get into  
14 calendar, the nine o'clock calendar.

15 (Whereupon, the calender was called. The following is  
16 the portion of the transcript requested.)

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

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

25 THE COURT: Okay.

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

28 MR. SAPERSTEIN: Good morning, Your Honor. Robert

1 Saperstein for Atascadero Mutual Water Company.

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

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

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

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

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

11 MS. WANG: Yes. It's Wang, W-A-N-G.

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

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

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

21 MR. WERNER: Yes, Your Honor.

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

24 MR. WERNER: Yes, Your Honor.

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

27 MR. MCMAHON: Yes, Your Honor.

28 THE COURT: And who are you appearing for,

1 Mr. McMahon?

2 MR. MCMAHON: San Miguel Community Services District.

3 THE COURT: Okay. Do I have Jeff Briltz?

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

6 THE COURT: Okay. Ryan Bezerra?

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

10 THE COURT: Okay. Thank you. Elizabeth Ewens.

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

14 THE COURT: Okay. Thank you. Daniel McGee?

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

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

1 that was brought to my attention. All right? So, for Paso  
2 Robles I have -- is it -- let's see. Who do I have for Paso  
3 Robles here? Ms. Wang?

4 MR. DUNN: And Mr. Dunn.

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

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

9 THE COURT: Okay.

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

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

16 MR. DUNN: Yes, it does.

17 THE COURT: Okay. I've got it.

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

20 THE COURT: Right.

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

27 THE COURT: Were these in the papers?

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

1 they were.

2 THE COURT: All right.

3 MR. DUNN: One is *City of Lodi Versus East Bay*  
4 *Municipal Utilities District*. It's a 1936 case. It's found at  
5 7 Cal.2d 316. And the pin cite is 341. And then I'll get to  
6 the second case in a second. And there's just a short sentence  
7 in there on page 341. I'll just read it. It says, "Since the  
8 adoption of the 1928 constitutional amendment it is not only  
9 within the power, but it is also the duty of the trial court to  
10 admit evidence relating to possible physical solutions, and if  
11 none is satisfactory to suggest on its own motion such physical  
12 solution."

13 The second reference to the case I believe was in the  
14 papers. It's the *City of Santa Maria versus Adam*. It's the  
15 2012 decision. And it's 211 Cal.App.4th at page 288. And the  
16 quote there is, "There is no requirement that there be an  
17 overdraft before the Court may impose a physical solution."  
18 What we're arguing is that because it's the duty of the courts  
19 to consider the physical solution it is not dependent upon  
20 pleading an overdraft or prescription. It is, in our view,  
21 sufficient pleading just to make the request for a physical  
22 solution given the fact that we have this legal controversy  
23 between the parties, and also in the pleadings that there's an  
24 overdraft. So, on that affirmative defense issue alone in the  
25 tentative our position would be that there's no further pleading  
26 required other than to request the physical solution.

27 THE COURT: All right. Okay. All right. Do you want  
28 to respond?

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

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

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

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

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

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

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

1 Your Honor.

2 THE COURT: All right.

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

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

24 This case only involves the right to capture the  
25 groundwater. And it's a basic, straightforward quiet title  
26 action. Prescription is not at issue. No injunction is at  
27 issue. In fact, whether there's a surplus or overdraft is not  
28 an issue at this point. Which is why *Tulare* specifically states

1 that the showing of reasonable use is necessary before issuing  
2 an injunction. That's very distinct from this case. So, the  
3 questions of use go to surplus or overdraft. They do not go to  
4 the appurtenant right of an overlying user to take groundwater.  
5 Of course if defendants are asserting an adverse claim that's  
6 their burden to prove. But that's not at issue in the  
7 complaint.

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

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

19 MR. WERNER: Okay. With regard to the motion in  
20 limine, defendant's argument, at least as far as I understand  
21 it, is that it arises from this analogy to riparian rights.  
22 That because the riparian owner has to show certain  
23 characteristics of the property, being that it's contiguous with  
24 the stream that's within the watershed, etc., that that carries  
25 over to an overlying owner to show what exactly, you know, basin  
26 boundaries, things of that nature. The difference is that not  
27 all property in California is riparian. So, those cases are  
28 requiring the plaintiff to prove that it has -- that the right

1 to that stream exists. In other words, they have to prove  
2 something about the nature of the property. In comparison, an  
3 overlying owner, there is no special characteristic of the  
4 property that needs to be shown before that property interest,  
5 that appurtenant right exists. Every property in California is  
6 overlying. It's of no importance whether it's overlying a  
7 basin, whether it's overlying a different basin, or whether it's  
8 overlying no basin at all, as with much of California.

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

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

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

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

27 THE COURT: But then -- well, I don't know that I  
28 agree with you on that and I'll tell you why. Is that you've

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

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

16 THE COURT: Okay. All right. So, I'm going to tell  
17 you this, that a quiet title action necessarily implies that  
18 there are conflicting claims. So, I think we're talking around  
19 each other a little bit. So, you've now sued these defendants  
20 saying that they are -- and I quoted the complaint in the  
21 tentative. But saying that they are basically tapping into --  
22 and let me quote it. "Plaintiffs believe defendants pumped some  
23 amount of percolating groundwater from this percolating supply.  
24 And defendants claims -- claim rights to pump groundwater from  
25 the supply equal to or superior to the rights of plaintiffs."  
26 So, if that's, in fact, the case, I think you've got to -- I  
27 think it's your burden to show -- you don't have to define the  
28 boundaries. You don't have to prove the boundaries of the

1 basin. But what you do have to prove is if they're tapping into  
2 the water that you have an overlying right to. Because if you  
3 don't prove that then arguably they shouldn't even be in this  
4 case. You're not going to get a quiet title judgment against  
5 them unless you can show that they somehow are interfering with  
6 your property rights. Do you follow me?

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

21 THE COURT: So, they're -- and I'm talking  
22 hypothetically here, so don't read too much into it. The  
23 allegation is either the defendants are appropriators of the  
24 water or they have a prescriptive right to the water or they're  
25 strangers. They don't access that water supply at all. So,  
26 what happens if they're complete strangers, meaning they're not  
27 tapping into that water? Can you still get a quiet title  
28 judgment against them?

1 MR. WERNER: Yes. The procedure for that, the quiet  
2 title action, would be for defendants to say we're strangers to  
3 this water and we're disclaiming any adverse interest.  
4 Therefore, we're out of the case.

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

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

8 THE COURT: Oops. Did I -- overlying property rights.  
9 Right. Right.

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

22 THE COURT: I think that's the gist of the tentative.  
23 But I do want to make it clear that don't read too much into the  
24 tentative. The tentative doesn't obligate you to define the  
25 basin boundaries. That's not what the tentative says.  
26 Tentative does say that you've got the burden of proving your  
27 quiet title claim which includes supporting the allegations in  
28 the complaint that defendants are tapping into or using the

1 supply of percolating water that your clients have an overlying  
2 right to. Once you've proven that then you've met your burden  
3 of proof.

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

6 MR. BEZERRA: Your Honor --

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

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

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

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

1 Maria does not support the plaintiff's position as the tentative  
2 recognizes.

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

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

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

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

21 THE COURT: But I think by virtue of the fact, and  
22 again I think we're agreeing to disagree a little bit here, but  
23 I want to make sure you understand where I'm coming from. The  
24 fact that you have sued them and made these allegations I think  
25 it's your burden of proof to support those allegations against  
26 them. It's not their burden, as I think Mr. Saperstein said, to  
27 affirmatively disprove what you've alleged. I think you've got  
28 the burden of proof as the plaintiff. And that was really kind

1 of the gist of the tentative. So, I understand your point. But  
2 I think unless there's anything else I'm going to adopt the  
3 tentative. All right? Okay.

4 MR. SAPERSTEIN: Your Honor, I'm primarily here to  
5 understand what happens next. We have, ostensibly, a trial late  
6 this year for basin boundaries. But if I understand the Court's  
7 --

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

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

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

27 MR. WERNER: Thank you, Your Honor.

28 MR. SAPERSTEIN: The expectation is that plaintiff

1 will put on that prima facie case and then defendants can choose  
2 whether they need to contest it or not?

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

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

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

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

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

17 MR. SAPERSTEIN: It is easier.

18 MR. DUNN: Yes, sir.

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

21 MR. WERNER: Typically, I believe so.

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

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

28 THE COURT: That whole week. Okay.

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

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

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

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

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

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

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

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

20 MR. DUNN: Yes, Your Honor.

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

23 MS. EWENS: Your Honor?

24 THE COURT: Yes.

25 MS. EWENS: Your Honor, this is Elizabeth Ewens. The  
26 only intervening deadlines that we have between now and then are  
27 the expert disclosures, as well as expert depositions that are  
28 set right now to take place in October. Obviously it's going to

1 be difficult to designate experts if we are still trying to --

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

10 MR. SAPERSTEIN: Your Honor, what about early in  
11 September? Does it work to do the week of the 8th?

12 THE COURT: I start a trial September 14th. So, I  
13 could give you September 9th.

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

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

19 MR. DUNN: All right.

20 MS. EWENS: Thank you, Your Honor.

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

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

28 MR. DUNN: Thank you, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MR. WERNER: Thank you.

(Whereupon, this matter adjourned.)

---oOo---

