

APPENDIX B
WRIGHT V. GOLETA WATER DISTRICT
TENTH ANNUAL REPORT IN THE WRIGHT V. GOLETA WATER DISTRICT
SAFE WATER SUPPLIES ORDINANCE - 1991
AN AMENDMENT TO THE SAFE WATER SUPPLIES ORDINANCE - 1994

Wright Suit will be included here

TENTH ANNUAL REPORT IN THE WRIGHT V. GOLETA WATER DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

MARTHA H. WRIGHT, et al Plaintiffs,	CASE NO. SM57969 GOLETA WATER DISTRICT'S RESPONSE TO OVERLYING OWNERS' REPLY AND OPPOSITION TO THE TENTH ANNUAL REPORT
GOLETA WATER DISTRICT, et al - Defendants.	DATE: July 24, 1998 TIME: 1:30 p.m. DEPT: <u>SB Municipal</u> Court Department One

The Overlying Owners represented by Hatch & Parent (all further references in this Response to Overlying Owners shall refer only to the Overlying Owners represented by Hatch & Parent) raise three main issues:

1. Is there a December 31, 1998 deadline to request Augmented Service or Exchange Service?
2. Does the Goleta Water District ("District") have an obligation under the Judgment to file, serve and have a hearing on an Annual Report, every year in perpetuity?
3. Is the District's obligation under the Judgment to provide Augmented Service without quantity limitation?

We will address each of these issues separately, beginning with the simplest.

1. THERE IS NO DEADLINE TO REQUEST EXCHANGE OR AUGMENTED SERVICE

The District submits with this Response, a revised proposed Odder attached as Exhibit "A", which includes the language requested by the Overlying Owners on the issue that there is no deadline to request Augmented Service.

2. THE DISTRICT'S OBLIGATION UNDER THE JUDGMENT TO SUBMIT ANNUAL REPORTS ENDS WITH THE TENTH ANNUAL REPORT

Contrary to the statement made by the Overlying Owners that the Judgment does not suggest or imply that the District's annual reporting requirement ceases upon the achievement of Hydrologic Balance

and the conclusion of the Tenth Annual Report hearing, comments made by the Court and several of the parties at the conclusion of the Ninth Annual Report hearing last year, suggest that it is clearly understood that with the achievement of Hydrologic Balance, the District's Annual Report obligation under the Judgment ceases with the Tenth Annual Report. The entire purpose of the Annual Report process is to ensure that the District achieves Hydrologic Balance by December 31, 1998. (Judgment, page 111, paragraph 19(h).) The Judgment also states:

The Water Plan also addresses future water demand, but this Judgment only compels the Water District to achieve Hydrologic Balance and to provide water to Overlying Owners as stated herein. (Judgment, page 112, paragraph 20.)

As demonstrated in the Tenth Annual Report, the District has in fact achieved Hydrologic Balance as defined by the Judgment. The purpose for the Annual Reports is therefore fulfilled.

In addition to satisfying the terms of the Judgment, there are good practical reasons why the Annual Report process need not continue. As demonstrated by the record of these proceedings, water supply planning is not a fast moving process. The District's water supply from the Cachuma Project has been in place for over 40 years and it is not reasonable to expect that the District would take any action to negatively impact that water supply. The District has invested over \$100,000,000.00 (One Hundred Million Dollars) in the State Water Project, and there is no reason to believe that there will be any significant changes to that water supply, resulting from any actions taken by the District, in the future. The District has invested approximately \$30,000,000.00 (Thirty Million Dollars) in its Reclamation Project and it certainly intends to continue to operate those facilities. The District has stated that its Water Plan includes deferring groundwater extractions for the foreseeable future. There is no evidence before the Court to suggest that there is any need for the Court to oversee the District's groundwater operations for the foreseeable future. The continuing jurisdiction of this Court proposed in the Order, allows any party to notice a motion and bring a matter to the Court should there be compelling evidence to suggest the need for the Court's participation in the District's water supply planning

Substantial District resources, and those of the Court, are required to process the Annual Reports. As there is no compelling reason to continue the Annual Report process, those expenditures of public funds and resources should not be required. We strongly suggest to the Overlying Owners that rather than request that the Court address this issue, they reconsider their position and withdraw their request to require the District to file Annual Reports in perpetuity, and therefore avoid the associated waste of public resources.

The Hatch & Parent law firm is General Counsel to the Central Coast Water Authority and therefore, is thoroughly advised regarding the District's State Water Project operations. The Hatch & Parent law firm is General Counsel to the Santa Ynez River Water Conservation District, Improvement District No. 1, which is a Cachuma Project Member Unit. The Hatch & Parent law firm is therefore readily familiar with Cachuma Project operations. The District is subject to the Public Records Act. Both as a matter of law and as standard Goleta Water District practice, any reasonable request for information will be responded to. Should the Overlying owners have a need or interest in any information regarding the District and its operations, they simply have to request that information and it will be made available. Neither the Judgment, nor current circumstances provide any justification for requiring the District to file Annual Reports under the Judgment, forever!

3. THE DISTRICT'S OBLIGATION TO PROVIDE AUGMENTED SERVICE IS LIMITED TO 500 ACRE FEET PER YEAR.

We will begin this section by agreeing with the Overlying Owners that the issue regarding the District's obligation to provide Augmented Service in excess of 500 AFY, is not yet ripe for adjudication and the question should be deferred. We understand that the Overlying Owners agree with this proposal.

The District has always understood its obligation to provide Augmented Service as being limited to

500 acre fee per year ("AFY") - The Judgment at page 133, paragraph 31(a) (4) states that the supply of water necessary to be developed by the Water District to support Augmented Service, "need not exceed an annual supply of 500 AFY."

The District's Fourth Annual Report filed on June 15, 1992, states as follows:

Under the terms of the Judgment the District has an obligation to provide up to 500 AFY of new water service to the Overlying Owners as "Augmented Service." (Page 12, lines 3-6.)

In another section of the Fourth Annual Report regarding a dispute as to the rights of the Goleta-Union School District to receive Augmented Service, the District states as follows:

District has an obligation to provide a cumulative total of 500 AFY of water for Augmented Service. It is thus immaterial to the District which parties or properties receive that service.' Clearly, the Private Overlying Owners have an interest in this issue since if the School District properties receive Augmented Service, that reduces the "pool" of water available to them. (Fourth Annual Report, page 15, lines 3-8.)

The District has attached as Exhibit "B" the first page of the Fourth Annual Report, and pages 1215 of that Report that address the Augmented Service issue. The Overlying owners responded to the Fourth Annual Report, but nowhere disputed the District's position that the District's obligation to provide Augmented Service is limited to 500 AFY.

At the same time that the Fourth Annual Report was before the Court, the District also filed a Motion Regarding Recognition of Goleta Water District's Water Supply. The specific purpose of that Motion was to demonstrate the District's ability to provide Augmented Service. In that Motion, the District stated:

It is the purpose of this Motion to request an Order of the Court finding that the District does in fact have adequate water supplies to meet all of its current obligations and in addition, the Augmented Service demand of up to 500 AFY. (Motion, page 2, lines 22-25.)

At page 6 of the Motion, the District identifies Augmented Service as a new 500 AFY demand. At page 8 of the Motion, the District states:

Based on the foregoing, it is established that the District has adequate water supplies to serve all of its existing demand obligations, including the 500 AFY for Augmented Service.

A true and correct copy of the Motion is attached as Exhibit "C".

The Overlying Owners filed a pleading in support of the District's Motion. Nowhere in that Overlying Owner pleading is there any dispute with the District's position that its obligation to provide Augmented Service is only 500 AFY.

As a preliminary matter, it is the District's understanding that the 500 AFY limitation on Augmented Service may never become "ripe" for adjudication because it is the District's understanding that the figure was set higher than the estimate of potential demand from the Overlying Owners. That understanding seems to have been borne out by history, as we are now 10 years post Judgment and in the middle of a development boom in the Goleta Water District service area, and only 324.77 AFY of Augmented Service has been requested to date- Even much of the Augmented Service that has been requested and approved has not actually been implemented.

Contrary to the Overlying Owners argument, there is nothing inherent in the Augmented Service limitation that is inconsistent with a Physical Solution or the Overlying Owners' water rights. "The usual purpose of a physical solution is to avoid a waste of water without unreasonably or adversely affecting the rights of the parties. City of Los Angeles v City of San Fernando (1975) 14 Cal.3rd 999; 123 Cal.Rptr. 1. It

is recognized by the District that should an Overlying Owner have a demand for water after the 500 AFY of Augmented Service has been exhausted, that Overlying Owner may develop private groundwater facilities to serve any reasonable use of water on their property.

At the time Judgment was entered, the District was reliant upon groundwater resources to meet its then existing customer demand. It agreed to provide up to 500 AFY of Augmented Service as part of the physical solution to avoid an injunction. It was absolutely critical at that time that the District's production of groundwater not be enjoined.

Consistent with the physical solution, it will be appropriate in the future should the day come that Augmented Service is exhausted, that the District and the Overlying Owner have the opportunity to decide whether the District wishes to provide additional service consistent with the provision of Augmented Service, or it may be determined that it is preferable for the Overlying Owner to develop its own private groundwater facilities.

It must be recognized that from a financial standpoint, there is not an equal relationship between District service and the Overlying Owners' water rights. The District provides regulated, treated water in a conjunctive use operation that allows for the reliable service of high quality treated water, on demand. Today, the District charges a fee to connect to the system of \$23,588.00 per acre foot of new demand. Even that significant connection fee, does not recover the value of the District's facilities necessary to supply water to new development. The District of course generates revenues from its monthly water rates to contribute to the costs of its operations. There is nothing inherent in a physical solution, California water law or the Judgment, that requires the District to provide an extremely valuable service, without limitation, to the Overlying Owners in perpetuity.

The Judgment, as a physical solution, is in the nature of an agreement between the parties. As indicated in the Overlying Owners' Reply, "To put the Judgment in context, each party made some compromise to allow the Physical Solution to work." (Reply, page 7, lines 11-12.) It was reasonable at the time the Judgment was entered, for the District to offer up to 500 AFY of District service to avoid an injunction against its groundwater production. It is understood by the District that should Augmented Service availability be exhausted, the Overlying Owners would retain their water rights to produce groundwater, to serve any new development on the Overlying Owners' property.

CONCLUSION

The District agrees with the Overlying Owners that there is no time limit on a request for Exchange Service or Augmented Service and the proposed Order has been amended to reflect that fact.

The District strongly objects to a reading of the Judgment that would require it to participate in an Annual Report process in perpetuity.

The District requests that the Court defer addressing the 500 AFY Augmented Service limitation until that matter is "ripe" for adjudication. The continuing jurisdiction of the Court stated in the proposed Order provides the Overlying Owners with the opportunity to bring this matter to the Court in the future, should it be necessary.

Date: July 17, 1998

HILL & SANDFORD, LLP

By: Russell R. Ruiz
Attorneys for Defendant
GOLETA WATER DISTRICT

SAFE WATER SUPPLIES ORDINANCE - 1991

GOLETA WATER DISTRICT
Ordinance No. 91-01

SAFE WATER SUPPLIES ORDINANCE

THE PEOPLE OF THE GOLETA WATER DISTRICT, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DO ORDAIN AND ENACT THE FOLLOWING ORDINANCE WHICH SHALL BE KNOWN AS THE SAFE WATER SUPPLIES ORDINANCE.

RECITALS:

Whereas, the Goleta Water District (District) faces a significant shortage of water to meet current long-term water demands of its customers as determined by the State Department of Water Resources and the Santa Barbara County Flood Control and Water Conservation District in their 1985 Santa Barbara County Water Project Alternatives study, and

Whereas, a drought emergency was declared in Santa Barbara County in 1990 following four years of below normal precipitation within Santa Barbara County and, in the future, the District will continue to be subject to recurring drought cycles which will threaten the ability of the District to meet the health and safety needs of its customers unless new and diversified, long term water projects are developed: and

Whereas, the District relies exclusively on local water supplies to meet its current water demand, which supplies originate entirely within Santa Barbara County and which supplies are all subject to the same climatic conditions: and

Whereas, in the absence of a system limiting the District's authority to provide new and/or additional water service connections without first mandating groundwater storage of water in wet years for use in dry years (a "drought buffer program") District customers may face severe water shortage in the future: and

Whereas, on October 1, 1990 the Board of Directors of the Goleta Water District adopted a Water Supply Management Plan which includes use of water supplies from both a desalting plant and the State Water Project: and

Whereas, the District is a party to an agreement with the Santa Barbara County Flood Control and Water Conservation District entitled "Water Supply Retention Agreement" dated December 11, 1984 which it executed on June 28, 1986 (the "WSRA") entitling the District to 4560 acre feet per year from the State Water Project, and has executed amendments thereto: and

Whereas, the District is also a party to a "Contract for Preliminary Studies of Financial Feasibility, Preliminary Design and Environmental Review Under State Water Supply Contract" (the "Design and EIR Agreement") dated June 2, 1986 but did not identify itself as a proposed participant in the preliminary studies in response to the "Notice of Intent to Request Preliminary Studies" for the Coastal Branch and the Mission Hills Extension at the California Aqueduct given by the City of Santa Maria on or about May 24, 1986: and

Whereas, the WSRA and its amendments and the Design and EIR Agreement contain the ways and means to provide for a long term solution to the existing drought emergency and to the ongoing water shortage within the County of Santa Barbara: and

Whereas, the District has a duty to provide a permanent, reliable water supply to its residents,

NOW, THEREFORE, THE FOLLOWING ORDINANCE IS ENACTED INTO LAW:

I. Drought Buffer

1. In each year, commencing in the first year the State Water Project makes deliveries to the District, the District shall, after providing service to its existing customers, commit at least 2,000 acre feet of its water

supply (the "Annual Storage Contribution") to the Goleta Central Basin either by direct injection or by reduction in groundwater pumping. The water so stored in the Central Basin shall constitute the District's "Drought Buffer."

2. The Drought Buffer may be pumped and distributed by the District only to existing customers and only in the event that a drought on the South Coast causes a reduction in the District's annual deliveries from Lake Cachuma. The Drought Buffer cannot, under any circumstances, be used by the District as a supplemental water supply to serve new or additional demands for water within the District.

3. Unless and until the Central Basin Water level rises to 100% of its 1972 levels, the District shall be required to make its Annual Storage Commitment. Thereafter, for so long as the District maintains the Central Basin at or above 1972 levels, the District may utilize the yield at the Central Basin to lower the cost of water service to existing customers.

II. Water Supply Distribution Plan

4. The District shall be forbidden from providing new an additional potable water service connections to any property not previously served by the District until all of the following conditions are met:

- a. District is receiving 100% of its deliveries normally allowed from the Cachuma Protect
- b. The District has met its legal obligations required by the judgment in Wright v. Goleta Water District
- c. Water rationing by the District is eliminated
- d. The District has met its obligation to make its Annual Storage Commitment to the drought buffer

5. For each year in which the conditions of paragraph 4, have been met, the Distinct shall be authorized to release 1% of its total potable water supply to new or additional service connections and if such new releases are authorized, me District shall permanently increase the sine of the Annual Storage Commitment made to the Drought buffer by 2/3 of the amount of any release for new or additional uses so that safe water supplies in times of drought shall not be endangered by any new or additional demands.

III. State Water Supply

6. Due to controversy concerning the physical ability of the State Water Project to deliver its full contractual commitments, District shall plan for delivery of only 2,500 acre feet per year as the amount at the firm new yield from the State Water Project. Any excess water actually delivered shall be stored in the Goleta Groundwater basin for use in drought.

7. The District shall immediately either (a) give Notice of its Intention to Request Construction of Described Protect Facilities under the State Water Contract, as provided for in Section 5(a)(1) of the WSRA or (b) respond to any such notice previously given by any other Contractor at provided for in Section 5(a)(2) of the WSRA that it wishes to participate in the described protect.

8. The Project Facilities to be constructed pursuant to the Notice of Intention shall be the Mission Hills and Santa Ynez Extensions of the Coastal Branch of the California Aqueduct and required water treatment facilities and other appurtenant facilities (herein the "Project Facilities").

9. The District agrees, pursuant to section 5(a)(2) of the WSRA, that the time for determination of participation and sizing of the Protect Facilities may be any date on or after September 1, 1991 agreeable to the other participants.

10. The District shall, in the shortest time lawfully possible, exercise all of its rights and fulfill all of its obligations under the WSRA, including the payment of any monies requires thereunder.

11. The District shall file a Late Request to Amend, pursuant to Section 3(t) of the Design and EIR Agreement, and agrees to pay its proportionate share of all costs required by said Section 3(f) and any amounts required under Section 3(g) of said Design and EIR Agreement.

12. The District, or the Santa Barbara Water Purveyors Agency, or any other joint powers agency of which the District is a member or may become a member for such purposes, may issue revenue bonds ("bonds") from time to time in an amount not to exceed Forty-Two Million Dollars (\$42,000,000.00) to provide funds to finance the District's pro rata share of the costs and expenses under the WSRA and the Design and EIR Agreement. Said bonds shall be used for the purposes of constructing the Project Facilities, including without limitation, any and all necessary facilities required for the delivery of State Project Water pursuant to the WSRA to the District through the Coastal Branch of the California Aqueduct, including any and all expenses incidental thereto or connected therewith, and shall include, without limitation, the cost of acquiring rights of way, the cost of constructing and/or acquiring all buildings, equipment and related personal and real property required to complete the Project Facilities, and the engineering, environmental review, inspection, legal and fiscal agent's fees, costs incurred by the District or joint powers agency in connection with the issuance and sale of such bonds, and reserve fund and bond interest estimated to accrue during the construction period and for a period not to exceed twelve (12) months after completion of construction, such bonds to be payable from the District's water revenues, to bear interest at a rate or rates not to exceed the legal maximum from time to time, and to mature in not more than forty (40) years from the date of issuance

13. This Ordinance shall be submitted to a vote of the people of the District in compliance with the requirements of Section 5(a)(4)(i) of the WSRA and pursuant to Elections Code Section 5201.

14. All actions taken pursuant to this Ordinance shall be in compliance with all local, state and federal environmental protection laws. Nothing in the Ordinance shall be construed to require such compliance prior to the election provided for herein.

15. This Ordinance shall be liberally construed and applied in order to fully promote its underlying purposes. If any word, sentence, paragraph or section of this Ordinance is determined to be unenforceable by a court of law, it is the intention of the District that the remainder of the Ordinance shall be enforced.

16. If adopted, this ordinance shall be an amendment to the Responsible Water Policy Ordinance adopted by the people in May, 1973, and may not be modified except pursuant to the vote, of the electorate of the District. To the extent that the provisions of this ordinance conflict with that ordinance or any prior ordinance or measure previously enacted by the District on the voters of In u District, the provisions of this ordinance shall control. To the extent that the provisions of this Ordinance conflict with any other ordinance or measure adopted at the same election, the ordinance or measure receiving the highest number of affirmative votes shall control.

17. Nothing herein is intended to affect the rights of any parties nor the obligations of the District pursuant to the judgment in the action known as *Wright v. Goleta Water District*, Santa Barbara Superior Court Case No. SM57969

18. This ordinance shall take effect immediately upon being approved by majority vote of the votes cast

at the election.

AN AMENDMENT TO THE SAFE WATER SUPPLIES ORDINANCE – 1994

THE PEOPLE OF THE GOLETA WATER DISTRICT, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DO ORDAIN AND ENACT THE FOLLOWING ORDINANCE WHICH SHALL BE AN AMENDMENT TO THE SAFE WATER SUPPLIES ORDINANCE

RECITALS:

WHEREAS, the voters of the Goleta Water District ("District") enacted the SAFE Water Supplies Ordinance ("SAFE") in June, 1991 authorizing the participation by the District in the State Water Project and providing for the bond financing to develop the Project Facilities necessary for delivery of that water to the District: and

WHEREAS, the District is now a member of the Central Coast Water Authority, the members of which are cooperating collectively to develop the Project Facilities which are now under construction: and

WHEREAS, SAFE provides for the creation of a Drought Buffer of water stored in the Goleta groundwater basin to protect against future drought emergencies and a Water Supply Distribution Plan to protect the District's water supplies against new demands until deliveries from the State Water Project are available: and

WHEREAS, this proposed amendment to SAFE maintains all the provisions regarding the protection of water supplies provided by the Drought Buffer and the Water Supply Distribution Plan: and

WHEREAS, pursuant to provisions of the judgment in the lawsuit known as Wright v. Goleta Water District the District is required to develop a Water Plan to provide the necessary water supplies to achieve a balance between supply and demand for water within the District. The District's Water Plan is based on continuing to use the maximum amount of water available from the Cachuma Project; prudent management of the Goleta groundwater basin: use of the newly constructed wastewater reclamation protect to replace existing use of potable water for turf irrigation; a continuing water conservation planning effort: participation in the State Water Project; and the necessary level of commitment to a desalinated seawater project. As a result of the long-term water supply deficit in the District, the District has been operating under a water connection moratorium for over twenty years. Once fully implemented the District's Water Plan should provide adequate supplies to meet long-term water demand in the District; and

WHEREAS, the forty year water service contract with the United States Bureau of Reclamation for delivery of water from the Cachuma Project will expire in May 1995. Negotiations are currently under way to renew that contract, The Bureau of Reclamation has required that the Cachuma Project be subjected to an environmental review process which is now being undertaken, It appears likely that the District's yield from the Cachuma Protect after contract renewal will be less than the current yield as a result of the dedication of water for environmental enhancement purposes on the lower Santa Ynez River; and

WHEREAS, the Southern California Water Company is a Santa Barbara County water purveyor which currently holds rights to an entitlement to 3,000 acre feet per year of water from the Slate Water Project and has given notice of its intent to sell 2,500 acre feel of that entitlement. The Goleta Water District has identified itself as a potential purchaser of the entitlement. It is the intent of this Ordinance to authorize the acquisition and use of that entitlement; and

WHEREAS, the District estimates the annual cost of the Southern California Wafer Company entitlement to be \$500 per acre-foot of water delivered to the District. The entitlement acquisition is intended to reduce the long-term costs of water to the District and its customers in that alternative supplies that would be available, and necessary to meet the District's long term demand would be more expensive than the water available from Southern California Water Company The District's cost analysis of the acquisition is available at the District office.

NOW, THEREFORE, THE FOLLOWING ORDINANCE IS ENACTED INTO LAW:

1. The District is authorized to secure an additional entitlement to the State Water Project in an amount up to 2,500 acre text per year, which is currently available from the Southern California Water Company. This entitlement will supplement the 4,500 acre-feet per year authorized by the voters in originally adopting the SAFE Water Supplies Ordinance. This authorization shall provide for the payment of all costs of the acquisition and use of any additional entitlement acquired. Due to the controversy concerning the physical ability of the State Water Protect to deliver its full contractual commitments, the District shall plan for the delivery of 3,800 acre feet per year of water as the amount of firm average long-term yield. The Districts total State Water Protect entitlement includes the basic entitlement of 4,500 acre feet per year, the District's share of the drought buffer held by the Central Coast Water Authority and the entitlement acquired pursuant to this authorization. Any excess water actually delivered over 3,800 acre feet per year shall be stored in the Goleta Groundwater Central basin until the basin is replenished to its 1972 level, for use during drought conditions.
2. Enactment of this Ordinance shall comply with all applicable law, including the California Environmental Quality Act.
3. If adopted, this Ordinance shall be an amendment to the SAFE Water Supplies Ordinance adopted by the electorate in June 1991, which amended and superseded the Responsible Water Policy Ordinance, originally adopted by the electorate in 1973. Paragraph 1 of this Ordinance shall amend and fully supersede paragraph 6 of the SAFE Water Supplies Ordinance. All other provisions of the SAFE Ordinance shall remain in full force and effect. It adopted, this Ordinance may not be modified except pursuant to a vote of the electorate of the District.
4. This Ordinance shall be liberally construed and applied in order to fully promote its underlying purposes. If any word, sentence, paragraph or section of this Ordinance is determined to be unenforceable by a court of law, it is the intention of the District that the remainder of the Ordinance shall be enforced.