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10 Mortuary

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 Coordination Proceeding) Judicial Council Coordination
16 Special Title (Rule 1550(b))) Proceeding No. 4408
17)
18 **ANTELOPE VALLEY**) Santa Clara Case No. 1-05-CV-049053
19 **GROUNDWATER CASES**) Assigned to the Honorable Jack Komar
20) Department 17C
21 Including Consolidated Actions:)
22 **Los Angeles County Waterworks District**) **SCI CALIFORNIA FUNERAL SERVICES,**
23 **No. 40 v. Diamond Farming Co.**) **INC., A CALIFORNIA CORPORATION**
24 Superior Court of California, County of Los) **DBA JOSHUA MEMORIAL PARK AND**
25 Angeles, Case No. BC 325 201) **MORTUARY'S GROUNDWATER**
26) **PRODUCTION RIGHT EVIDENTIARY**
27) **PROVE-UP BRIEF**
28 **Los Angeles County Waterworks District**) [Filed concurrently with Declaration of
29 **No. 40 v. Diamond Farming Co.**) Christopher Twitchell; Declaration of Jason
30 Superior Court of California, County of) Coleman, P.E.; Declaration of Derek R.
31 Kern, Case No. S-1500-CV-254-348) Hoffman; Stipulation for Admission of Evidence
32) in Support of Production Right; and [Proposed]
33 **Wm. Bolthouse Farms, Inc. v. City of**) Order]
34 **Lancaster**)
35 **Diamond Farming Co. v. City of**)
36 **Lancaster**) Date: February 5, 2021
37 **Diamond Farming Co. v. Palmdale**) Time: 9:00 a.m.
38 **Water Dist.**) Judge: Hon. Jack Komar, Judge
39 Superior Court of California, County of)
40 Riverside, consolidated actions, Case Nos.) **[Hearing to be conducted by Courtcall]**
41 **RIC 353 840, RIC 344 436, RIC 344 668**)
42)
43 **AND RELATED ACTIONS.**)
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1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 Intervenor **SCI CALIFORNIA FUNERAL SERVICES, INC., A CALIFORNIA**
3 **CORPORATION DBA JOSHUA MEMORIAL PARK AND MORTUARY** (“Joshua
4 Memorial”), by and through its attorneys of record, Derek R. Hoffman, Esq. of Gresham Savage
5 Nolan & Tilden, PC, hereby submits the following Prove-Up Brief in accordance with Paragraph
6 5.1.10 of the December 23, 2015 Judgment and Physical Solution (“Judgment”) and Court’s
7 Order After Hearing on December 8, 2020. Joshua Memorial’s Declarations in Lieu of Live
8 Testimony in Support of Joshua Memorial’s Groundwater Production Right Prove-Up and
9 supporting Exhibits, together with a Stipulation for Admission of Evidence In Support of
10 Production Right, are submitted concurrently with this Prove-Up Brief.

11 **I. INTRODUCTION**

12 Judgment Paragraph 5.1.10 provides for a non-Party who was an existing but unknown
13 pumper at the time the Judgment was entered, to obtain a recognized Production Right upon
14 presentation of evidence and a ruling by the Court, with certain limitations. For many decades,
15 Joshua Memorial has owned and operated its cemetery property, and it has produced groundwater
16 from the Antelope Valley Groundwater Basin (“Basin”) in reasonable amounts and for beneficial
17 irrigation use of the cemetery grounds. Joshua Memorial was never named, served, defaulted or
18 otherwise joined in the Antelope Valley Groundwater Adjudication (“Adjudication”). Joshua
19 Memorial successfully intervened in, and became a Party to, the Judgment, as directed by the
20 Order of the Court of November 14, 2019.

21 That Order, and subsequent Orders of the Court, directed the process for the completion of
22 discovery, negotiations and scheduling of this hearing specifically to consider evidence and to
23 determine and quantify Joshua Memorial’s Production Right claim. All parties that initially
24 objected to Joshua Memorial’s Production Right claim amount have stipulated with Joshua
25 Memorial to a proposed resolution of the claim. Joshua Memorial respectfully requests the Court
26 consider and admit the evidence presented by Joshua Memorial in support of the Groundwater
27 Production Right Evidentiary Prove-Up, and enter an order establishing a Judgment Paragraph

1 5.1.10 Production Right for Joshua Memorial in the amount of **thirty-eight acre feet per year (38**
2 **AFY)**, and a Pre-Rampdown Production in the amount of 101.5 AFY.

3 **II. SUMMARY OF JUDGMENT PARAGRAPH 5.1.10 AND JOSHUA MEMORIAL’S**
4 **PRIOR INTERVENTION**

5 **a. Judgment Paragraphs 5.1.10. and 20.9.**

6 Judgment Paragraph 5.1.10 provides for a non-Party who was an existing but unknown
7 pumper at the time the Judgment was entered, to present evidence and, upon a ruling by the Court,
8 to obtain a recognized Production Right. Judgment Paragraph 5.1.10 defines both the eligibility
9 requirements and the process for obtaining Court approval of a Non-Stipulating Party Production
10 Right:

11 **“5.1.10. Production Rights Claimed by Non-Stipulating Parties.** Any claim to
12 a right to Produce Groundwater from the Basin by a Non-Stipulating Party shall
13 be subject to procedural or legal objection by any Stipulating Party. Should the
14 Court, after taking evidence, rule that a Non-Stipulating Party has a Production
15 Right, the Non-Stipulating Party shall be subject to all provisions of this
16 Judgment, including reduction in Production necessary to implement the Physical
17 Solution and the requirements to pay assessments, but shall not be entitled to
18 benefits provided by Stipulation, including but not limited to Carry Over pursuant
19 to Paragraph 15 and Transfers pursuant to Paragraph 16. If the total Production by
20 Non-Stipulating Parties is less than seven percent (7%) of the Native Safe Yield,
21 such Production will be addressed when Native Safe Yield is reviewed pursuant
22 to Paragraph 18.5.9. If the total Production by Non-Stipulating Parties is greater
23 than seven percent (7%) of the Native Safe Yield, the Watermaster shall
24 determine whether Production by Non-Stipulating Parties would cause Material
25 Injury, in which case the Watermaster shall take action to mitigate the Material
26 Injury, including, but not limited to, imposing a Balance Assessment, provided
27 however, that the Watermaster shall not recommend any changes to the
28 allocations under Exhibits 3 and 4 prior to the redetermination of Native Safe
29 Yield pursuant to Paragraph 18.5.9. In all cases, however, whenever the
30 Watermaster re-determines the Native Safe Yield pursuant to Paragraph 18.5.9,
31 the Watermaster shall take action to prevent Native Safe Yield Production from
32 exceeding the Native Safe Yield on a long-term basis.”

33 Judgment Paragraph 20.9 requires non-Parties to intervene in and become a Party to the
34 Judgment in order to Produce Groundwater from the Basin. Prior to filing a motion to intervene, a

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1 proposed intervenor must consult with the Watermaster and seek the Watermaster’s stipulation to
2 intervene:

3 **“20.9 Intervention After Judgment.** Any Person who is not a Party (or successor
4 to a Party) and who proposes to Produce Groundwater from the Basin, to store
5 water, to acquire a Production Right or to take actions that may affect the Basin’s
6 Groundwater, is required to seek to become a Party subject to this Judgment
7 through a noticed motion to intervene in this Judgment prior to commencing
8 Production. Prior to filing such a motion, a proposed intervenor shall consult with
9 the Watermaster Engineer and seek the Watermaster’s stipulation to the proposed
10 intervention. A proposed intervenor’s failure to consult with the Watermaster
11 Engineer may be grounds for denying the motion to intervene. Thereafter, if
12 approved by the Court, such intervenor shall be a Party bound by this Judgment.”

13 Joshua Memorial fit squarely within the provisions of Judgment Paragraph 5.1.10, as it was
14 unknown existing pumper who was never named, served, defaulted or otherwise joined in the
15 Adjudication and did not therefore execute a Stipulation for Entry of Judgment, but has a
16 legitimate right to Produce Groundwater subject to approval of the Court. (Declaration of Chris
17 Twitchell in Lieu of Live Testimony in Support of Joshua Memorial’s Groundwater Production
18 Right Evidentiary Prove-Up (“Twitchell Decl.”), ¶ 10; Declaration of Derek R. Hoffman in Lieu of
19 Live Testimony in Support of Joshua Memorial’s Groundwater Production Right Evidentiary
20 Prove-Up (“Hoffman Decl.”), ¶ 3.)

21 **b. Joshua Memorial Submitted its Extensive Production Right Application to the**
22 **Watermaster and Watermaster Engineer.**

23 As the first (and only) non-Party to seek to intervene under Paragraph 5.1.10 since the
24 entry of the Judgment, Joshua Memorial began this process more than eighteen months ago when
25 it submitted to the Watermaster, Watermaster Engineer and Watermaster General Counsel on
26 June 12, 2019, an extensive 345-page “Production Application”. The Production Application
27 comprised a detailed letter with supporting evidence and analysis, including a report prepared by
Luhdorff & Scalmanini Consulting Engineers (“LSCE”) entitled, “SCI California Funeral
Services, Inc. dba Joshua Memorial Park Irrigation Water Use Estimate” (“Initial LSCE
Report”). The Initial LSCE Report estimated Joshua Memorial’s average groundwater

1 production for irrigation to be approximately between 91 to 147 acre feet year (“AFY”) and at an
2 average 122 AFY, based upon electricity usage data for the well from 2015 to 2017. (Hoffman
3 Decl., ¶ 4, Exhibit 1.) The Production Application was also presented to the Watermaster
4 Advisory Committee, in accordance with Judgment Paragraph 19.3. On July 11, 2019, Joshua
5 Memorial submitted a further, 30-page detailed letter responsive to those questions, along with
6 supporting evidence and analysis, to the Watermaster Board addressing Advisory Committee
7 questions. (Hoffman Decl., ¶ 5, Ex. 2.)

8 At its regular meeting of July 24, 2019, the Watermaster Board unanimously adopted
9 Resolution No. R-19-21, “*Approving Request for Stipulation to Allow Intervention Into the*
10 *Judgment to Obtain a Production Right and for Approval of Replacement Well Application*
11 *Pursuant to the Terms of the Judgment.*” (Hoffman Decl., ¶ 6, Ex. 3.) The Resolution found, in
12 accordance with the Watermaster General Counsel’s Memorandum of June 13, 2019, that a
13 non-Party may seek to intervene and become a Non-Stipulating Party under Paragraph 5.1.10. The
14 Watermaster further found that, conditioned on successful intervention in the Judgment, all
15 conditions for drilling a replacement well were met under the Judgment and the Watermaster Rules
16 and Regulations, and that no Material Injury will result from the proposed application to drill a
17 Replacement Well. The Watermaster made no findings regarding the quantity of the Production
18 Right sought by Joshua Memorial, recognizing that issue to be a matter for determination by the
19 Court.

20 **c. The Court Granted Joshua Memorial’s Motion to Intervene and Ordered Further**
21 **Hearings for Quantification of Joshua Memorial’s Production Right Claim.**

22 Having completed—if not exceeded—the Watermaster consultation and application
23 process—Joshua Memorial filed its Motion to Intervene in the Judgment. Joshua Memorial sought,
24 by its motion: (1) to intervene pursuant to Paragraph 20.9 of the Judgment and (2) to be granted a
25 Production Right in the amount of 122 acre-feet per year as a Non-Stipulating Party pursuant
26 Judgment Paragraph 5.1.10. Certain Landowner Parties filed an Amended Joint Opposition to the
27 Motion, opposing only the granting of a Production Right. Those Landowner parties included:

1 Tejon Ranchcorp; AVEK; County Sanitation Districts 14 and 20 of Los Angeles County; State of
2 California; Santa Monica Mountains Conservancy; 50th District Agricultural Association; Wm.
3 Bolthouse Farms and Bolthouse Properties, LLC; and, City of Los Angeles and Los Angeles
4 World Airports. Palmdale Water District filed a joinder and the Antelope Valley Watermaster
5 filed a limited joinder to the Amended Joint Opposition. U.S. Borax, Inc., subsequently
6 participated in negotiations regarding Joshua Memorial’s Production Right claim. The foregoing
7 parties are collectively referred herein to as the “Opposing Parties”.

8 Following the hearing on the Motion, the Court issued its written Order After Hearing on
9 November 14, 2019, which granted Joshua Memorial’s Motion to Intervene in the Judgment
10 pursuant to Paragraph 5.1.10 of the Judgment, “as a previously unknown and unserved party”. The
11 Order directed that a hearing will be scheduled to take evidence and consider objections to the
12 request for specific quantities of pumping rights for Joshua Memorial. The Order required Joshua
13 Memorial to produce relevant records establishing Joshua Memorial pumping prior to the entry of
14 Judgment, and further provided that Parties may propose to engage in specified discovery, to be
15 submitted to the Court for approval after the parties had met and conferred. (Hoffman Decl. ¶ 7,
16 Ex. 4.)

17 **d. Joshua Memorial and Opposing Parties Complete Court-Ordered Discovery.**

18 Joshua Memorial and the Opposing Parties presented the Court with a Stipulation and
19 Order for Discovery, which Order was entered by the Court on December 10, 2019 (“Discovery
20 Order”). (Hoffman Decl., ¶ 8, Ex. 5.) Joshua Memorial produced all required documents and
21 information under the Discovery Order through *SCI California Funeral Services, Inc., a California*
22 *Corporation dba Joshua Memorial Park’s Verified Discovery Response Regarding Groundwater*
23 *Production Right Claim*, which was served on May 14, 2020 (“Verified Discovery Responses”).
24 (Twitchell Decl., ¶ 11, Ex. 5.) The Verified Discovery Responses included specific responses,
25 supporting records and an Updated LSCE Report dated May 12, 2020, comprising an updated
26 analysis of Joshua Memorial’s historical groundwater production based upon additional
27 pre-Judgment electrical utility usage information and related additional information. The Opposing

1 Parties evaluated the discovery production, including the Updated LSCE Report, and engaged in
2 settlement negotiations.

3 **e. Joshua Memorial and All Opposing Parties Stipulate to Proposed Resolution of**
4 **Joshua Memorial's Paragraph 5.1.10 Production Right Claim.**

5 On November 30, 2020, prior to the December 8, 2020 continued Case Management
6 Conference, Joshua Memorial and the Opposing Parties filed a Joint Case Management
7 Conference Statement and Request for Prove-Up Hearing Regarding Joshua Memorial's
8 Groundwater Production Right claim. The parties reported that, having conducted substantive
9 settlement discussions, a proposed resolution was reached regarding Joshua Memorial's Paragraph
10 5.1.10 Production Right claim, including providing for a substantial reduction from its historical
11 groundwater production and for payment of applicable assessments under the Judgment.

12 **f. Court Orders Prove-Up Evidentiary Hearing.**

13 As reflected in the Court's Order After Hearing of December 8, 2020, the Court ordered,
14 and all parties were given notice of this telephonic evidentiary hearing to prove-up the proposed
15 resolution of Joshua Memorial's Production Right claim, and accompanying briefing schedule.
16 (Hoffman Decl. ¶ 10, Exhibit 7.)

17 **III. SUMMARY OF EVIDENCE AND ARGUMENTS IN SUPPORT OF JOSHUA**
18 **MEMORIAL'S PRODUCTION RIGHT CLAIM AND THE PROPOSED**
19 **RESOLUTION OF THE CLAIM**

20 **a. Joshua Memorial Status as Non-Stipulating Party.**

21 Joshua Memorial presented evidence of its longstanding existence, property ownership and
22 corporate history in support of its Motion to Intervene. In its Order After Hearing on November 14,
23 2019, the Court considered that evidence and made findings that Joshua Memorial was entitled to
24 intervene under the provisions of the judgment as a previously unknown and unserved party. The
25 Court specifically granted the request of Joshua Memorial to intervene in the Judgment pursuant to
26 Paragraph 5.1.10. Consequently, Joshua Memorial's status as a Non-Stipulating Party (which is a
27 Party) under the Judgment is already established. Evidence establishing Joshua Memorial's

1 property ownership and corporate status is provided with the concurrently filed supporting
2 Declarations of Chris Twitchell and Derek Hoffman. (Twitchell Decl., ¶¶ 4-6, Exs. 1-3; Hoffman
3 Decl., ¶ 5, Ex. 2.)

4 **b. Joshua Memorial Property Ownership within Adjudication Area.**

5 Joshua Memorial owns and operates a cemetery and mortuary located at 808 East Lancaster
6 Blvd., Lancaster, CA 93535. The approximately forty-acre Joshua Memorial property is located
7 within the Antelope Valley Adjudication Area. Joshua Memorial acquired the property in
8 December 1949 by grant deed. (Twitchell Decl., ¶¶ 4-6, Exs. 1-3.) The property includes an
9 approximately twenty-one-acre cemetery, an approximately two-acre mortuary building and
10 parking lot, a residential home at the southeast corner of the property, a mobile home and
11 maintenance shop at the western side of the property, and approximately sixteen acres of future
12 cemetery grounds. (Twitchell Decl., ¶ 8.)

13 **c. Joshua Memorial's Claim to Groundwater Production Within the**
14 **Adjudication Area, and Determination of Production.**

15 Joshua Memorial claims the right to Produce and use Groundwater in reasonable amounts
16 and for beneficial uses for irrigation of its cemetery grounds, which includes turf, trees, shrubs and
17 other vegetation. Joshua Memorial is informed and believes and thereon asserts that the
18 groundwater well on the property was developed in approximately the late 1950s, at or near the
19 time Joshua Memorial began operating; and, has continuously produced groundwater for irrigation
20 of the cemetery grounds. (Twitchell Decl., ¶ 7.)

21 The acreage under irrigation with well water at Joshua Memorial's property for each year
22 from 2000 through 2017 is estimated to be an average of approximately just under 19 acres. The
23 maximum estimated irrigated acreage during that timeframe is estimated to be approximately 21.4
24 acres in 2003, and the lowest estimated irrigated acreage during that timeframe is estimated to be
25 approximately 18.3 acres from 2004 to 2013. Starting in 2015 through 2017 there was a smaller
26 irrigated area south of mortuary building. This increased the irrigated area to 18.7 acres. (Twitchell
27 Decl., ¶ 8; Coleman Decl., ¶¶ 4,6, Ex. 2); Joshua Memorial Verified Discovery Responses, ¶ 1.c.)

1 In April 2018, the groundwater well ceased operating. Because the irrigation well pump
2 was not equipped with a flowmeter or totalizer before the well ceased operating, direct-
3 measurement production data is not available and must be estimated using other reliable methods.
4 (Twitchell Decl., ¶ 9, Ex. 4.)

5 Joshua Memorial's average annual groundwater production for the years 2000-2017 is
6 estimated to range from between 78 and 125 AFY, which is based upon the analysis of the
7 Updated LSCE Report. As described in the Updated LSCE Report, Joshua Memorial's irrigation
8 system includes the groundwater well pump, a hydropneumatic tank and irrigation sprinklers and
9 blocks. The Updated LSCE Report utilized electricity usage data for the groundwater well and an
10 analysis of the Joshua Memorial system to estimate total Joshua Memorial annual average
11 groundwater production for the years 2000 – 2017. (Coleman Declaration ¶ 4, Ex. 2 Updated
12 LSCE Report.) The mortuary building and the residential home at the southeast corner of the
13 property receive municipal water service and do not rely on water supplied from the well.
14 (Twitchell Decl., ¶ 8.)

15 Joshua Memorial has also produced evidence of its historical groundwater use dating back
16 to approximately the late 1950s. (Joshua Memorial Verified Discovery Responses, ¶ 1.c, including
17 historical pictures of irrigated area of the Joshua Memorial property, and Los Angeles County
18 permit and letters authorizing operation of the cemetery dated September and October 1949;
19 Joshua Memorial Verified Discovery Responses ¶ 1.b., including Edison well pump tests dated
20 January 6, 1984 (estimating 108.1 pumped acre-feet per year); April 14, 1988 (estimating 167.5
21 pumped acre-feet per year); and October 17, 1990 (estimating 115.2 pumped acre-feet per year).

22 **d. Opposing Parties' Contentions Regarding Joshua Memorial's Production**
23 **Right Claim and Evidence.**

24 The Opposing Parties initially contended that Joshua Memorial was not entitled to a
25 Production Right, based on several factors. They contended that though Joshua Memorial was not
26 personally served with the Public Water Suppliers' First Amended Complaint, it received notice
27 via service by publication. The Objecting Parties contended that Joshua Memorial's evidence of

1 self-help pumping is barred by operation of Water Code section 5004 because Joshua Memorial
2 failed to file annual Notices of Extraction and Diversion of Water in the form required by Water
3 Code section 5002 for the years that it pumped water. Joshua Memorial contends that its status as a
4 Non-Stipulating Party has been established through its Motion to Intervene, and that while a failure
5 to file Notices of Extraction and Diversion of Water is a factor that the Court may consider, it is
6 appropriately addressed through the proposed resolution of its Production Right claim.

7 The Opposing Parties raised concerns that Joshua Memorial’s initial claimed average water
8 use in its Motion to Intervene in the amount of 122 acre-feet per year was not supported by its
9 evidence. They asserted, for example, that the area of cemetery under irrigation is approximately
10 18 acres, whereas Joshua Memorial’s estimate ranges slightly higher. They contended that
11 Southern California Edison electrical utility records of use correlated to Joshua Memorial’s
12 groundwater well suggested that Joshua Memorial used substantially less water than average
13 during the period of 2006 through 2011. They contended that Joshua Memorial initially failed to
14 deduct from its estimated electrical use, the electrical demand associated with the maintenance
15 shop building and the mobile home on site periodically inhabited by employees of the cemetery.
16 Joshua Memorial’s expert evaluated that contention and determined that background electrical
17 loads do not play a major factor in the total electrical usage of the meter powering the well pump.
18 (Coleman, Dec., ¶ 10).

19 The Opposing Parties initially asserted that equitable factors weighed against awarding
20 Joshua Memorial a Production Right in the full amount of 122 AFY. They observed that many of
21 the Opposing Parties agreed to reduce historic pumping by 50% or more, as reflected in Exhibit 4
22 to the Judgment and individual groundwater production data in the Phase 4 Trial decision. They
23 noted that heavy water users, such as the alfalfa growers and carrot farmers in the Basin, agreed to
24 reduce their pumping to at or below approximately two acre-feet per irrigated acre per year and
25 contended that, as a matter of equity, Joshua Memorial should not achieve a better result than those
26 who litigated the case, negotiated a resolution, and have been paying Basin management
27 assessments since the Judgment was entered. Joshua Memorial responds that a Paragraph 5.1.10

1 Production Right includes inherent limitations that are not imposed upon holders of Exhibit 4
2 Production Rights. Joshua Memorial will also pay applicable post-Judgment assessments, in
3 accordance with the Watermaster Rules and Regulations. Thus, the proposed allocation achieves
4 an equitable result.

5 The Opposing Parties therefore contend, based on the foregoing, the risk and uncertainty of
6 trial, the policy favoring negotiated resolution of disputed claims, and the purpose of Paragraph
7 5.1.10 of the Judgment, that allowing Joshua Memorial a Judgment Paragraph 5.1.10 Production
8 Right of 38 AFY, and a Pre-Rampdown Production of 101.5 AF, represents a reasonable and
9 equitable resolution of Joshua Memorial's claim.

10 **IV. THE PROPOSED RESOLUTION OF JOSHUA MEMORIAL'S PRODUCTION**
11 **RIGHT CLAIM IN THE AMOUNT OF THIRTY-EIGHT ACRE FEET (38 AF) IS**
12 **REASONABLE, EQUITABLE AND SUPPORTED BY THE EVIDENCE AND THE**
13 **JUDGMENT.**

14 Joshua Memorial and the Opposing Parties jointly propose a fair and equitable resolution of
15 Joshua Memorial's Judgment Paragraph 5.1.10 Production Right Claim which is supported by
16 facts and evidence and the requirements of Paragraph 5.1.10. The parties propose that Joshua
17 Memorial be assigned a Paragraph 5.1.10. Production Right in the amount of thirty-eight acre-feet
18 per year (38 AFY) and a Pre-Rampdown Production in the amount of one-hundred one and one-
19 half acre-feet per year (101.5 AFY). Further, Joshua Memorial shall pay Administrative
20 Assessments effective post-Judgment (beginning in 2016) as required by Judgment Paragraph 9.1,
21 and shall pay Replacement Water Assessments effective post-Judgment, as required by Judgment
22 Paragraphs 9.2 and 8.3.

23 **a. The Proposed Paragraph 5.1.10 Production Right for Joshua Memorial in the**
24 **Amount of 38 Acre Feet Year is Fair and Equitable.**

25 The proposed 38 AFY Paragraph 5.1.10 Production Right comprises a sixty-three percent
26 (63%) Rampdown from Joshua Memorial's actual pumping estimated average of 101.5 AFY. The
27 Rampdown percentage is even greater (70%) when applied to the 125 AFY upper limit of the

1 Updated LSCE Report estimated pumping range. This reduction is commensurate, if not greater,
2 than most of the Stipulating Parties to the Judgment, and reflects a reasonable “reduction in
3 Production necessary to implement the Physical Solution” (Judgment Paragraph 5.1.10, p. 25, ln.
4 1-2.)

5 **b. The Proposed Pre-Rampdown Production of 101.5 AFY is Reasonable and**
6 **Supported by the Judgment and the Evidence.**

7 The proposed 101.5 AFY Pre-Rampdown Production figure is reasonable and supported by
8 the Judgment and the evidence. The Updated LSCE Report found that the estimated range of 78 to
9 125 AFY to be a realistic approximation of the historical groundwater production from the
10 irrigation well from years 2000 through 2017. (Coleman Decl., ¶ 8.) The figure 101.5 AFY marks
11 the midpoint of that range. It is also almost exactly the 103 AFY pump flow rate at the well
12 system’s Best Efficiency Point determined in the Updated LSCE Report. Using the 101.5 AFY
13 midpoint of the estimated pumping range comprises a reasonable and conservative method to
14 assign Joshua Memorial’s Pre-Rampdown Production amount. Judgment Paragraph 3.5.28 defines
15 Pre-Rampdown Production as “the reasonable and beneficial use of Groundwater, excluding
16 Imported Water Return Flows, at a time prior to this Judgment, or the Production Right, whichever
17 is greater.” The Updated LSCE Report estimated pumping range is based upon electrical usage
18 data for years that included pre-Judgment data from 2000-2015.

19 Joshua Memorial’s Pre-Rampdown Production at 101.5 AFY will not significantly impact
20 the applicability of Replacement Water Assessments. Only two years remain for the Rampdown
21 Period (years 2021 and 2022). During the first two years of Rampdown (2016 and 2017), no
22 Replacement Water Assessments are imposed. (Judgment Paragraph 8.3). Joshua Memorial’s well
23 went dry in April 2018, and did not Produce Groundwater in 2019 or 2020 (and has not yet
24 constructed its replacement groundwater well to resume pumping). As such, Joshua Memorial has
25 not Produced Groundwater post-Judgment that would incur a Replacement Water Assessment, and
26 the imposition of the final two years’ Rampdown schedule for 2021 and 2022 leaves little
27 remaining margin free of Replacement Water Assessments above the significantly ramped down

1 38 AFY Production Right. Once Joshua Memorial’s Production Right and Pre-Rampdown
2 Production are established by the Court, Joshua Memorial will complete the necessary
3 Watermaster reporting forms and pay applicable assessments including Replacement Water
4 Assessments.

5 **c. Joshua Memorial’s Production Right Fits Squarely Within and Far Below the**
6 **Seven Percent (7%) Threshold for Non-Stipulating Parties.**

7 Judgment Paragraph 5.1.10 provides that if total Production by Non-Stipulating Parties is
8 less than seven percent (7%) of the Native Safe Yield, then such Production will be addressed
9 when Native Safe Yield is reviewed pursuant to Paragraph 18.5.9. It further provides that *if* total
10 Production by *all* Non-Stipulating Parties exceeds seven percent (7%) of the Native Safe Yield,
11 *then* the Watermaster Engineer would conduct a Material Injury analysis of that cumulative
12 production in the 17th year following entry of Judgment (per Judgment Paragraph 18.5.9). In other
13 words, under Judgment Paragraph 5.1.10., no Material Injury analysis is required so long as
14 cumulative Non-Stipulating Party production remains below the seven percent (7%) threshold.

15 Seven percent of the Native Safe Yield equates to 5,740 AFY.¹ Currently, the only
16 Production assigned under Paragraph 5.1.10 is that of the “Supporting Landowner Parties,” which
17 totals just 342.8 AFY²—a fraction of one percent of the Native Safe Yield. Assigning a
18 Non-Stipulating Party (Paragraph 5.1.10) Production Right to Joshua Memorial in the amount of
19 38 AFY would bring the total “pool” to just 380.8 AFY—still less than one percent of the Native
20 Safe Yield.

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27 ¹ The Native Safe Yield is 82,300 AFY (Judgment, Paragraph 4.1.). 82,300 AFY x 7% = 5,740 AFY.

² The Supporting Landowner Parties’ production is listed on Judgment, p. 2.

1 **V. SUPPORTING INFORMATION AND DATA**

2 The evidence supporting Joshua Memorial’s Production Right claim and prove-up includes the
3 following, which are filed concurrently herewith:

4 **1. Declaration of Christopher Twitchell in Lieu of Live Testimony in Support of SCI**
5 **California Funeral Services Inc., a California corporation dba Joshua Memorial**
6 **Park and Mortuary’s Groundwater Production Right Evidentiary Prove-Up, and**
7 its corresponding exhibits, including:

- 8 a. **Exhibit 1** – December 19, 1949 grant deed conveying the approximately 40-acre
9 property to Joshua Memorial Park, Inc.
10 b. **Exhibit 2** – Property profile report identifying Joshua Memorial Park as the owner
11 of record of the subject property and identifying APN 3146-009-929 and APN
12 3146-009-053.
13 c. **Exhibit 3** – Joshua Memorial’s filings with the California Secretary of State,
14 including Certificates of Ownership, Articles of Incorporation and related filings.
15 d. **Exhibit 4** – July 2018 permit from Los Angeles County Department of Public
16 Works to access temporary emergency water supply for cemetery irrigation.
17 e. **Exhibit 5** – Joshua Memorial’s Verified Discovery Responses to Court’s Discovery
18 Order, dated May 14, 2020, including the May 12, 2020 Updated LSCE Report and
19 extensive supporting electrical utility usage data, property information, photographs
20 and records evidencing Joshua Memorial’s historical groundwater production and
21 use.³

22 **2. Joshua Memorial Verified Discovery Response Regarding Groundwater**
23 **Production Right Claim, and corresponding attachments, served on May 14, 2020**
24 **(comprising Exhibit 5 to the Twitchell Declaration) specifically including:**

- 25 a. **Attachment “1.b.i.”** containing:

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27 ³ For the convenience of the Court, the Updated LSCE Report is instead directly attached to the Coleman
28 Declaration.

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- i. Southern California Edison billing history and usage summary for the service account pertaining to the well, provided by Edison in response to Joshua Memorial’s Deposition Subpoena for Production of Business Records.
 - ii. Edison well pump tests dated January 6, 1984 (estimating 108.1 pumped acre-feet per year); April 14, 1988 (estimating 167.5 pumped acre-feet per year); and October 17, 1990 (estimating 115.2 pumped acre-feet per year), provided by Edison in response to Joshua Memorial’s Deposition Subpoena for Production of Business Records.
 - iii. Invoices from DRC Pump Systems dated 1988, 1993 and 2018.
- b. **Attachment “1.c”** containing:
- i. Layout of Joshua Memorial Park, dated August 19, 1977.
 - ii. Joshua Memorial Park “Master Plan”.
 - iii. Joshua Memorial Cemetery Map, dated approximately prior to 2006.
 - iv. Joshua Memorial Cemetery Map with annotations approximating dates of development of most if not all of the property areas since 2000.
 - v. Google Earth satellite images of Joshua Memorial Park dated between May 1994 and April 2017.
 - vi. Picture of the Joshua Memorial property taken prior to 1988.
 - vii. Picture of the Joshua Memorial property taken approximately in the late 1950s.
 - viii. Los Angeles County Board of Supervisors letter to Director of Planning: regarding Order granting permit for cemetery and appurtenances, dated October 4, 1949.
 - ix. Letter from Regional Planning Commission to Los Angeles County Board of Supervisors recommending approval of permit for Joshua Memorial cemetery, dated September 23, 1949.

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- c. **Attachment “1.e.”** containing:
 - i. Pictures of the mobile home taken in April 2020 showing the mobile home unit used as storage.
 - ii. Pictures of the mobile home, old well pump and equipment and surrounding area, taken by LSCE in April 2019.
 - iii. Pictures of the well and hydropneumatic tank taken in May 2019.
 - iv. Pictures of the maintenance shop and surrounding area, taken in April 2020.
 - v. Building permits for the maintenance shed, dated 1988.
 - vi. Letter from Joshua Memorial counsel to City of Lancaster Director of Community Development, dated June 16, 1989, describing the buildings on the Joshua Memorial property as of January 1986.

3. Declaration of Jason Coleman, P.E. in Lieu of Live Testimony in Support of SCI California Funeral Services Inc., a California corporation dba Joshua Memorial Park and Mortuary’s Groundwater Production Right Evidentiary Prove-Up, and its corresponding exhibits, including:

- a. **Exhibit 1** – Jason Coleman CV
- b. **Exhibit 2** – Updated LSCE Report, dated May 12, 2020.

4. Declaration of Derek R. Hoffman in Lieu of Live Testimony in Support SCI California Funeral Services Inc., a California corporation dba Joshua Memorial Park and Mortuary’s Groundwater Production Right Evidentiary Prove-Up, and its corresponding exhibits, including:

- a. **Exhibit 1** – Joshua Memorial 345-page Production Application to Watermaster, including Initial LSCE Report, dated June 12, 2019.
- b. **Exhibit 2** – Joshua Memorial Supplement to Production Application to Watermaster Advisory Committee, dated July 11, 2019.
- c. **Exhibit 3** – Watermaster Resolution No. R-19-21, “Approving Request for Stipulation to Allow Intervention Into the Judgment to Obtain a Production Right

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and for Approval of Replacement Well Application Pursuant to the Terms of the Judgment” dated July 24, 2019, and Watermaster General Counsel’s Memorandum of June 13, 2019.

- d. **Exhibit 4** – Court’s Order After Hearing on November 14, 2019, granting Joshua Memorial’s Motion to Intervene.
- e. **Exhibit 5** – Stipulation and Order for Discovery Regarding SCI California Funeral Services Inc., a California corporation dba Joshua Memorial Park’s Groundwater Production Right Claim, following a hearing of December 12, 2019.
- f. **Exhibit 6** – Joint Case Management Conference Statement and Request for Prove-Up Hearing Regarding Joshua Memorial’s Groundwater Production Right Claim, filed and served on November 30, 2020.
- g. **Exhibit 7** – Order After Hearing on December 8, 2020, ordering this prove-up hearing.

5. Stipulation for Admission of Evidence In Support of Production Right for SCI California Funeral Services, Inc., a California corporation dba Joshua Memorial Park and Mortuary Pursuant to Paragraph 5.1.10 of the Judgment and Physical Solution.

Joshua Memorial timely filed and served each of the above items comprising the Prove-Up package in support of Joshua Memorial’s Production Right claim, to establish the facts declared therein and to ask that the Court, subject to proper objection(s) timely filed in accordance with the Court’s Order after Hearing on December 8, 2020, to admit the facts therein declared into evidence to and to establish Joshua Memorial’s claim under the Paragraph 5.1.10 of the Judgment for a Production Right in the amount of 38 acre-feet per year and a Pre-Rampdown Production in the amount of 101.5 acre-feet.

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1 **VI. CONCLUSION**

2 Based on the foregoing, Joshua Memorial respectfully requests that the Court enter the
3 proposed Order submitted herewith.
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6 DATED: January 14, 2021

Respectfully submitted,

7 GRESHAM SAVAGE NOLAN & TILDEN, PC

8 By: 

9 DEREK R. HOFFMAN, ESQ.
10 Attorney for SCI CALIFORNIA FUNERAL SERVICES,
11 INC., a California Corporation dba JOSHUA
12 MEMORIAL PARK AND MORTUARY
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated
Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 550 East Hospitality Lane, Suite 300, San Bernardino, CA 92408-4205.

On January 14, 2021, I served the foregoing document(s) described **SCI CALIFORNIA FUNERAL SERVICES, INC., A CALIFORNIA CORPORATION DBA JOSHUA MEMORIAL PARK AND MORTUARY'S GROUNDWATER PRODUCTION RIGHT EVIDENTIARY PROVE-UP BRIEF** on the interested parties in this action in the following manner:

(X) **BY ELECTRONIC SERVICE** – I caused such document(s) listed above to be electronically served, via One Legal, to all parties appearing on the Santa Clara County Superior Court website, <http://www.scefiling.org>, in the action of the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is dina.snider@greshamsavage.com,

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 14, 2021 at San Bernardino, California.



DINA M. SNIDER