

EXHIBIT 3

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding Special Title
(Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No.: 1-05-CV-049053

Judge: The Honorable Jack Komar, Dept. 17

**[PROPOSED] JUDGMENT AND PHYSICAL
SOLUTION**

[PROPOSED] JUDGMENT

1 section 2 of the California Constitution and to protect the Basin and the Parties' rights to the
2 Basin's water resources. The Physical Solution governs Groundwater, Imported Water and Basin
3 storage space, and is intended to ensure that the Basin can continue to support existing and future
4 reasonable and beneficial uses. A Physical Solution requires determining individual Groundwater
5 rights for the Public Water Suppliers, landowners, Non-Pumper Class and Small Pumper Class
6 members, and other Parties within the Basin. The Physical Solution set forth in this Judgment:
7 (1) is a fair and reasonable allocation of Groundwater rights in the Basin after giving due
8 consideration to water rights priorities and the mandate of Article X, section 2 of the California
9 Constitution; (2) provides for a reasonable sharing of Imported Water costs; (3) furthers the
10 mandates of the State Constitution and State water policy; and (4) is a remedy that gives due
11 consideration to applicable common law rights and priorities to use Basin water and storage space
12 without substantially impairing such rights. Combined with water conservation, water
13 reclamation, water transfers, water banking, and improved conveyance and distribution methods
14 within the Basin, present and future Imported Water sources are sufficient both in quantity and
15 quality to assure implementation of a Physical Solution. This Judgment will facilitate water
16 resource planning and development by the Public Water Suppliers and individual water users.

17 **3.5 Definitions.** As used in this Judgment, the following terms shall have the
18 meanings set forth herein:

19 **3.5.1 Action.** The coordinated and consolidated actions included in the
20 Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408, Santa
21 Clara Superior Court Case No. 1-05-CV-049053.

22 **3.5.2 Adjusted Native Safe Yield.** The Native Safe Yield minus (1) the
23 Production Right allocated to the Small Pumper Class under Paragraph 5.1.3, (2) the Federal
24 Reserved Water Right under Paragraph 5.1.4, and (3) the State of California Production Right
25 under Paragraph 5.1.5. The Adjusted Native Safe Yield as of the date of entry of this Judgment is
26 70,686.6 acre-feet per year.

1 **3.5.3 Administrative Assessment.** The amount charged by the
2 Watermaster for the costs incurred by the Watermaster to administer this Judgment.

3 **3.5.4 Annual Period.** The calendar Year.

4 **3.5.5 Antelope Valley United Mutuals Group.** The members of the
5 Antelope Valley United Mutuals Group are Antelope Park Mutual Water Company, Aqua-J
6 Mutual Water Company, Averydale Mutual Water Company, Baxter Mutual Water Company,
7 Bleich Flat Mutual Water Company, Colorado Mutual Water Co., El Dorado Mutual Water
8 Company, Evergreen Mutual Water Company, Land Projects Mutual Water Co., Landale Mutual
9 Water Co., Shadow Acres Mutual Water Company, Sundale Mutual Water Company, Sunnyside
10 Farms Mutual Water Company, Inc., Tierra Bonita Mutual Water Company, West Side Park
11 Mutual Water Co. and White Fence Farms Mutual Water Co., together with the successor(s)-in-
12 interest to any member thereof. Each of the members of the Antelope Valley United Mutuals
13 Group was formed when the owner(s) of the lands that were being developed incorporated the
14 mutual water company and transferred their water rights to the mutual water company in
15 exchange for shares of common stock. The mutual water company owns, operates and maintains
16 the infrastructure for the production, storage, distribution and delivery of water solely to its
17 shareholders. The shareholders of each of these mutual water companies, who are the owners of
18 the real property that is situated within the mutual water company's service area, have the right to
19 have water delivered to their properties, a right appurtenant to their land. [*See, Erwin v. Gage*
20 *Canal Company* (1964) 226 Cal.App.2d 189].

21 **3.5.6 AVEK.** The Antelope Valley–East Kern Water Agency.

22 **3.5.7 Balance Assessment.** The amount of money charged by the
23 Watermaster on all Production Rights, excluding the United States' actual Production, to pay for
24 the costs, not including infrastructure, to purchase, deliver, produce in lieu, or arrange for
25 alternative pumping sources in the Basin.

26 **3.5.8 Basin.** The area adjudicated in this Action as shown on Exhibit 2,
27 attached hereto and incorporated herein by reference, which lies within the boundaries of the line
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1 labeled "Boundaries of the Adjudicated Area" and described therein. The Basin generally
2 encompasses the Antelope Valley bordered on the West and South by the San Gabriel and
3 Tehachapi Mountains, with the eastern boundary being the Los Angeles-San Bernardino County
4 line, as determined by the Court.

5 **3.5.9 Carry Over.** The right to Produce an unproduced portion of an
6 annual Production Right or a Right to Imported Water Return Flows in a Year subsequent to the
7 Year in which the Production Right or Right to Imported Water Return Flows was originally
8 available.

9 **3.5.10 Conjunctive Use.** A method of operation of a groundwater basin
10 under which Imported Water is used or stored in the Basin in Years when it is available; allowing
11 the Basin to refill, and more Groundwater is Produced in Years when Imported Water is less
12 available.

13 **3.5.11 Defaulting Party.** A Party who failed to file a responsive pleading
14 and against which a default judgment has been entered. A list of Defaulting Parties is attached as
15 Exhibit 1.

16 **3.5.12 Drought Program.** The water management program in effect only
17 during the Rampdown period affecting the operations and Replacement Water Assessments of the
18 participating Public Water Suppliers.

19 **3.5.13 Judgment.** A judgment, consistent with Cal.C.C.P. §§ 577 and
20 1908(a)(1) and 43 U.S.C. § 666, determining all rights to Groundwater in the Basin, establishing
21 a Physical Solution, and resolving all claims in the Action.

22 **3.5.14 Groundwater.** Water beneath the surface of the ground and within
23 the zone of saturation, excluding water flowing through known and definite channels.

24 **3.5.15 Imported Water.** Water brought into the Basin from outside the
25 watershed of the Basin as shown in Exhibit 9.

26 **3.5.16 Imported Water Return Flows.** Imported Water that net
27 augments the Basin Groundwater supply after use.

1 **3.5.17 In Lieu Production.** The amount of Imported Water used by a
2 Producer in a Year instead of Producing an equal amount of that Producer's Production Right.

3 **3.5.18 Material Injury.** Material Injury means impacts to the Basin caused
4 by pumping or storage of Groundwater that:

5 **3.5.18.1** Causes material physical harm to the Basin, any
6 Subarea, or any Producer, Party or Production Right, including, but not limited to, Overdraft,
7 degradation of water quality by introduction of contaminants to the aquifer by a Party and/or
8 transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and
9 other material physical injury caused by elevated or lowered Groundwater levels. Material physical
10 harm does not include "economic injury" that results from other than direct physical causes, including
11 any adverse effect on water rates, lease rates, or demand for water.

12 **3.5.18.2** If fully mitigated, Material Injury shall no longer be
13 considered to be occurring.

14 **3.5.19 Native Safe Yield.** Naturally occurring Groundwater recharge to
15 the Basin, including "return flows" from pumping naturally occurring recharge, on an average
16 annual basis. Imported Water Return Flows are not included in Native Safe Yield.

17 **3.5.20 New Production.** Any Production of Groundwater from the Basin
18 not of right under this Judgment, as of the date of this Judgment.

19 **3.5.21 Non-Overlying Production Rights.** The rights held by the Parties
20 identified in Exhibit 3, attached hereto and incorporated herein by reference.

21 **3.5.22 Non-Pumper Class.** All private (i.e., non-governmental) Persons
22 and entities that own real property within the Basin, as adjudicated, that are not presently
23 pumping water on their property and did not do so at any time during the five Years preceding
24 January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase,
25 gift, inheritance, or otherwise of such Non-Pumper Class members' land within the Basin. The
26 Non-Pumper Class excludes (1) all Persons to the extent their properties are connected to a
27 municipal water system, public utility, or mutual water company from which they receive water
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1 service, (2) all properties that are listed as “improved” by the Los Angeles County or Kern
2 County Assessor's offices, unless the owners of such properties declare under penalty of perjury
3 that they do not pump and have never pumped water on those properties, and (3) those who opted
4 out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have
5 been individually named under the Public Water Suppliers' cross-complaint, unless such a
6 landowner has opted into such class.

7 **3.5.23 Non-Pumper Class Judgment.** The amended final Judgment that
8 settled the Non-Pumper Class claims against the Public Water Suppliers approved by the Court
9 on September 22, 2011.

10 **3.5.24 Non-Stipulating Party.** Any Party who had not executed a
11 Stipulation for Entry of this Judgment prior to the date of approval of this Judgment by the Court.

12 **3.5.25 Overdraft.** Extractions in excess of the Safe Yield of water from
13 an aquifer, which over time will lead to a depletion of the water supply within a groundwater
14 basin as well as other detrimental effects, if the imbalance between pumping and extraction
15 continues.

16 **3.5.26 Overlying Production Rights.** The rights held by the Parties
17 identified in Exhibit 4, attached hereto and incorporated herein by reference.

18 **3.5.27 Party (Parties).** Any Person(s) that has (have) been named and
19 served or otherwise properly joined, or has (have) become subject to this Judgment and any prior
20 judgments of this Court in this Action and all their respective heirs, successors-in-interest and
21 assigns. For purposes of this Judgment, a “Person” includes any natural person, firm, association,
22 organization, joint venture, partnership, business, trust, corporation, or public entity.

23 **3.5.28 Pre-Rampdown Production.** The reasonable and beneficial use of
24 Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the
25 Production Right, whichever is greater.

26 **3.5.29 Produce(d).** To pump Groundwater for existing and future
27 reasonable beneficial uses.

1 **3.5.30 Producer(s).** A Party who Produces Groundwater.

2 **3.5.31 Production.** Annual amount of Groundwater Produced, stated in
3 acre-feet of water.

4 **3.5.32 Production Right.** The amount of Native Safe Yield that may be
5 Produced each Year free of any Replacement Water Assessment and Replacement Obligation.
6 The total of the Production Rights decreed in this Judgment equals the Native Safe Yield. A
7 Production Right does not include any right to Imported Water Return Flows pursuant to
8 Paragraph 5.2.

9 **3.5.33 Pro-Rata Increase.** The proportionate increase in the amount of a
10 Production Right, as provided in Paragraph 18.5.10, provided the total of all Production Rights
11 does not exceed the Native Safe Yield.

12 **3.5.34 Pro-Rata Reduction.** The proportionate reduction in the amount
13 of a Production Right, as provided in Paragraph 18.5.10, in order that the total of all Production
14 Rights does not exceed the Native Safe Yield.

15 **3.5.35 Public Water Suppliers.** The Public Water Suppliers are Los
16 Angeles County Waterworks District No. 40, Palmdale Water District, Quartz Hill Water District,
17 Littlerock Creek Irrigation District, California Water Service Company, Desert Lake Community
18 Services District, North Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch
19 Irrigation District, Rosamond Community Services District, and West Valley County Water
20 District.

21 **3.5.36 Purpose of Use.** The broad categories of type of water use
22 including but not limited to municipal, irrigation, agricultural and industrial uses.

23 **3.5.37 Rampdown.** The period of time for Pre-Rampdown Production to
24 be reduced to the Native Safe Yield in the manner described in this Judgment.

25 **3.5.38 Recycled Water.** Water that, as a result of treatment of waste, is
26 suitable for a direct beneficial use or a controlled use that would not otherwise occur and is
27 therefore considered a valuable resource.

1 **3.5.39 Replacement Obligation.** The obligation of a Producer to pay for
2 Replacement Water for Production of Groundwater from the Basin in any Year in excess of the
3 sum of such Producer's Production Right and Imported Water Return Flows.

4 **3.5.40 Replacement Water.** Water purchased by the Watermaster or
5 otherwise provided to satisfy a Replacement Obligation.

6 **3.5.41 Replacement Water Assessment.** The amount charged by the
7 Watermaster to pay for all costs incurred by the Watermaster related to Replacement Water.

8 **3.5.42 Responsible Party.** The Person designated by a Party as the
9 Person responsible for purposes of filing reports and receiving notices pursuant to the provisions
10 of this Judgment.

11 **3.5.43 Safe Yield.** The amount of annual extractions of water from the
12 Basin over time equal to the amount of water needed to recharge the Groundwater aquifer and
13 maintain it in equilibrium, plus any temporary surplus. [*City of Los Angeles v. City of San*
14 *Fernando* (1975) 14 Cal. 3d 199, 278.]

15 **3.5.44 Small Pumper Class.** All private (i.e., non-governmental)
16 Persons and entities that own real property within the Basin, as adjudicated, and that have been
17 pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the
18 present. The Small Pumper Class excludes the defendants in *Wood v. Los Angeles Co.*
19 *Waterworks Dist. 40, et al.*, any Person, firm, trust, corporation, or other entity in which any such
20 defendants has a controlling interest or which is related to or affiliated with any such defendants,
21 and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded
22 party. The Small Pumper Class also excludes all Persons and entities that are shareholders in a
23 mutual water company. The Small Pumper Class does not include those who opted out of the
24 Small Pumper Class.

25 **3.5.45 Small Pumper Class Members.** Individual members of the Small
26 Pumper Class who meet the Small Pumper Class definition, and for purposes of this Judgment
27 and any terms pertaining to water rights, where two or more Small Pumper Class Members reside
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1 in the same household, they shall be treated as a single Small Pumper Class Member for purposes
2 of determining water rights.

3 **3.5.46 State of California.** As used herein, State of California shall mean
4 the State of California acting by and through the following State agencies, departments and
5 associations: (1) The California Department of Water Resources; (2) The California Department
6 of Parks and Recreation; (3) The California Department of Transportation; (4) The California
7 State Lands Commission; (5) The California Department of Corrections and Rehabilitation; (6)
8 The 50th District Agricultural Association; (7) The California Department of Veteran Affairs; (8)
9 The California Highway Patrol; and, (9) The California Department of Military.

10 **3.5.47 State Water Project.** Water storage and conveyance facilities
11 operated by the State of California Department of Water Resources from which it delivers water
12 diverted from the Feather River and the Sacramento-San Joaquin Delta via the California
13 Aqueduct to public agencies it has contracted with.

14 **3.5.48 Stipulating Party.** Any Party who has executed a Stipulation for
15 Entry of this Judgment prior to the date of approval of this Judgment by the Court.

16 **3.5.49 Stored Water.** Water held in storage in the Basin, as a result of
17 direct spreading or other methods, for subsequent withdrawal and use pursuant to agreement with
18 the Watermaster and as provided for in this Judgment. Stored Water does not include Imported
19 Water Return Flows.

20 **3.5.50 Subareas.** Portions of the Basin, as described in this document,
21 divided for management purposes.

22 **3.5.51 Total Safe Yield.** The amount of Groundwater that may be safely
23 pumped from the Basin on a long-term basis. Total Safe Yield is the sum of the Native Safe
24 Yield plus the Imported Water Return Flows.

25 **3.5.52 Watermaster.** The Person(s) appointed by the Court to administer
26 the provisions of this Judgment.

1 **3.5.53 Watermaster Engineer.** The engineering or hydrology expert or
2 firm retained by the Watermaster to perform engineering and technical analysis and water
3 administration functions as provided for in this Judgment.

4 **3.5.54 District No. 40.** Los Angeles County Waterworks District No. 40.

5 **3.5.55 Year.** Calendar year.

6 **4. SAFE YIELD AND OVERDRAFT**

7 **4.1 Safe Yield:** The Native Safe Yield of the Basin is 82,300 acre-feet per
8 Year. With the addition of Imported Water Return Flows, the Total Safe Yield is approximately
9 110,000 acre-feet per Year, but will vary annually depending on the volume of Imported Water.

10 **4.2 Overdraft:** In its Phase 3 trial decision, the Court held that the Basin,
11 defined by the Court's March 12, 2007 Revised Order After Hearing On Jurisdictional
12 Boundaries, is in a state of overdraft based on estimate of extraction and recharge, corroborated
13 by physical evidence of conditions in the Basin. Reliable estimates of the long-term extractions
14 from the Basin have exceeded reliable estimates of the Basin's recharge by significant margins,
15 and empirical evidence of overdraft in the Basin corroborates that conclusion. Portions of the
16 aquifer have sustained a significant loss of Groundwater storage since 1951. The evidence is
17 persuasive that current extractions exceed recharge and therefore that the Basin is in a state of
18 overdraft. The Court's full Phase 3 trial decision is attached as Exhibit 5 and is incorporated
19 herein by reference.

20 **5. PRODUCTION RIGHTS**

21 **5.1 Allocation of Rights to Native Safe Yield.** Consistent with the goals of
22 this Judgment and to maximize reasonable and beneficial use of the Groundwater of the Basin
23 pursuant to Article X, section 2 of the California Constitution, all the Production Rights
24 established by this Judgment are of equal priority, except the Federal Reserved Water Right
25 which is addressed in Paragraph 5.1.4, and with the reservation of the Small Pumper Class
26 Members' right to claim a priority under Water Code section 106.

1 **6.4 Injunction Against Transportation From Basin.** Except upon further
2 order of the Court, each and every Party, its officers, agents, employees, successors and assigns,
3 is ENJOINED AND RESTRAINED from transporting Groundwater hereafter Produced from the
4 Basin to areas outside the Basin except as provided for by the following. The United States may
5 transport water Produced pursuant to its Federal Reserved Water Right to any portion of Edwards
6 Air Force Base, whether or not the location of use is within the Basin. This injunction does not
7 prevent Saint Andrew's Abbey, Inc., U.S. Borax and Tejon Ranchcorp/Tejon Ranch Company
8 from conducting business operations on lands both inside and outside the Basin boundary, and
9 transporting Groundwater Produced consistent with this Judgment for those operations and for
10 use on those lands outside the Basin and within the watershed of the Basin as shown in Exhibit 9.
11 This injunction also does not apply to any California Aqueduct protection dewatering Produced
12 by the California Department of Water Resources. This injunction does not apply to the recovery
13 and use of stored Imported Water by any Party that stores Imported Water in the Basin pursuant
14 to Paragraph 14 of this Judgment.

15 **6.4.1 Export by Boron and Phelan Piñon Hills Community Services**
16 **Districts.**

17 **6.4.1.1** The injunction does not prevent Boron Community Services
18 District from transporting Groundwater Produced consistent with this Judgment for use outside
19 the Basin, provided such water is delivered within its service area.

20 **6.4.1.2** The injunction does not apply to any Groundwater Produced
21 within the Basin by Phelan Piñon Hills Community Services District and delivered to its service
22 areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is
23 available for Production without causing Material Injury, and the District pays a Replacement
24 Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to
25 protect Production Rights decreed herein, on all water Produced and exported in this manner.

26 **6.5 Continuing Jurisdiction.** The Court retains and reserves full jurisdiction,
27 power and authority for the purpose of enabling the Court, upon a motion of a Party or Parties
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1 noticed in accordance with the notice procedures of Paragraph 20.6 hereof, to make such further
2 or supplemental order or directions as may be necessary or appropriate to interpret, enforce,
3 administer or carry out this Judgment and to provide for such other matters as are not
4 contemplated by this Judgment and which might occur in the future, and which if not provided for
5 would defeat the purpose of this Judgment.

6 **III. PHYSICAL SOLUTION**

7 **7. GENERAL**

8 **7.1 Purpose and Objective.** The Court finds that the Physical Solution
9 incorporated as part of this Judgment: (1) is a fair and equitable basis for satisfaction of all water
10 rights in the Basin; (2) is in furtherance of the State Constitution mandate and the State water
11 policy; and (3) takes into account water rights priorities, applicable public trust interests and the
12 Federal Reserved Water Right. The Court finds that the Physical Solution establishes a legal and
13 practical means for making the maximum reasonable and beneficial use of the waters of the Basin
14 by providing for the long-term Conjunctive Use of all available water in order to meet the
15 reasonable and beneficial use requirements of water users in the Basin. Therefore, the Court
16 adopts, and orders the Parties to comply with this Physical Solution.

17 **7.2 Need For Flexibility.** This Physical Solution must provide flexibility and
18 adaptability to allow the Court to use existing and future technological, social, institutional, and
19 economic options in order to maximize reasonable and beneficial water use in the Basin.

20 **7.3 General Pattern of Operations.** A fundamental premise of the Physical
21 Solution is that all Parties may Produce sufficient water to meet their reasonable and beneficial
22 use requirements in accordance with the terms of this Judgment. To the extent that Production by
23 a Producer exceeds such Producer's right to Produce a portion of the Total Safe Yield as provided
24 in this Judgment, the Producer will pay a Replacement Water Assessment to the Watermaster and
25 the Watermaster will provide Replacement Water to replace such excess production according to
26 the methods set forth in this Judgment.

1 **7.4 Water Rights.** A Physical Solution for the Basin based upon a declaration
2 of water rights and a formula for allocation of rights and obligations is necessary to implement
3 the mandate of Article X, section 2 of the California Constitution. The Physical Solution requires
4 quantifying the Producers' rights within the Basin in a manner which will reasonably allocate the
5 Native Safe Yield and Imported Water Return Flows and which will provide for sharing Imported
6 Water costs. Imported Water sources are or will be available in amounts which, when combined
7 with water conservation, water reclamation, water transfers, and improved conveyance and
8 distribution methods within the Basin, will be sufficient in quantity and quality to assure
9 implementation of the Physical Solution. Sufficient information and data exists to allocate
10 existing water supplies, taking into account water rights priorities, within the Basin and as among
11 the water users. The Physical Solution provides for delivery and equitable distribution of
12 Imported Water to the Basin.

13 **8. RAMPDOWN**

14 **8.1 Installation of Meters.** Within two (2) Years from the entry of this
15 Judgment all Parties other than the Small Pumper Class shall install meters on their wells for
16 monitoring Production. Each Party shall bear the cost of installing its meter(s). Monitoring or
17 metering of Production by the Small Pumper Class shall be at the discretion of the Watermaster,
18 subject to the provisions of Paragraph 5.1.3.2.

19 **8.2 Rampdown Period.** The "Rampdown Period" is seven Years beginning
20 on the January 1 following entry of this Judgment and continuing for the following seven (7)
21 Years.

22 **8.3 Reduction of Production During Rampdown.** During the first two Years
23 of the Rampdown Period no Producer will be subject to a Replacement Water Assessment.
24 During Years three through seven of the Rampdown Period, the amount that each Party may
25 Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual
26 increments, from its Pre-Rampdown Production to its Production Right. Except as is determined
27 to be exempt during the Rampdown period pursuant to the Drought Program provided for in
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1 Paragraph 8.4, any amount Produced over the required reduction shall be subject to Replacement
2 Water Assessment. The Federal Reserved Water Right is not subject to Rampdown.

3 **8.4 Drought Program During Rampdown for Participating Public Water**

4 **Suppliers.** During the Rampdown period a drought water management program ("Drought
5 Program") will be implemented by District No. 40, Quartz Hill Water District, Littlerock Creek
6 Irrigation District, California Water Service Company, Desert Lake Community Services District,
7 North Edwards Water District, City of Palmdale, and Palm Ranch Irrigation District,
8 (collectively, "Drought Program Participants"), as follows:

9 **8.4.1** During the Rampdown period, District No. 40 agrees to purchase
10 from AVEK each Year at an amount equal to 70 percent of District No. 40's total annual demand
11 if that amount is available from AVEK at no more than the then current AVEK treated water rate.
12 If that amount is not available from AVEK, District No. 40 will purchase as much water as
13 AVEK makes available to District No. 40 at no more than the then current AVEK treated water
14 rate. Under no circumstances will District No. 40 be obligated to purchase more than 50,000
15 acre-feet of water annually from AVEK. Nothing in this Paragraph affects AVEK's water
16 allocation procedures as established by its Board of Directors and AVEK's Act.

17 **8.4.2** During the Rampdown period, the Drought Program Participants
18 each agree that, in order to minimize the amount of excess Groundwater Production in the Basin,
19 they will use all water made available by AVEK at no more than the then current AVEK treated
20 water rate in any Year in which they Produce Groundwater in excess of their respective rights to
21 Produce Groundwater under this Judgment. During the Rampdown period, no Production by a
22 Drought Program Participant shall be considered excess Groundwater Production exempt from a
23 Replacement Water Assessment under this Drought Program unless a Drought Program
24 Participant has utilized all water supplies available to it including its Production Right to Native
25 Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water
26 Rights, Imported Water, and Production rights previously transferred from another party.
27 Likewise, no Production by a Drought Program Participant will be considered excess
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Rampdown the Administrative Assessment shall be no more than five (5) dollars per acre foot, or as ordered by the Court upon petition of the Watermaster. Non-Overlying Production Rights holders using the unused Production allocation of the Federal Reserved Water Right shall be subject to Administrative Assessments on water the Non-Overlying Production Rights holders Produce pursuant to Paragraph 5.1.4.1.

9.2 Replacement Water Assessment. In order to ensure that each Party may fully exercise its Production Right, there will be a Replacement Water Assessment. Except as is determined to be exempt during the Rampdown period pursuant to the Drought Program provided for in Paragraph 8.4, the Watermaster shall impose the Replacement Water Assessment on any Producer whose Production of Groundwater from the Basin in any Year is in excess of the sum of such Producer's Production Right and Imported Water Return Flow available in that Year, provided that no Replacement Water Assessment shall be imposed on the United States except upon the United States' written consent to such imposition based on the appropriation by Congress, and the apportionment by the Office of Management and Budget, of funds that are available for the purpose of, and sufficient for, paying the United States' Replacement Water Assessment. The Replacement Water Assessment shall not be imposed on the Production of Stored Water, In-Lieu Production or Production of Imported Water Return Flows. The amount of the Replacement Water Assessment shall be the amount of such excess Production multiplied by the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs. All Replacement Water Assessments collected by the Watermaster shall be used to acquire Imported Water from AVEK, Littlerock Creek Irrigation District, Palmdale Water District, or other entities. AVEK shall use its best efforts to acquire as much Imported Water as possible in a timely manner. If the Watermaster encounters delays in acquiring Imported Water which, due to cost increases, results in collected assessment proceeds being insufficient to purchase all Imported Water for which the Assessments were made, the Watermaster shall purchase as much water as the proceeds will allow when the water becomes available. If available Imported Water is insufficient to fully meet the Replacement Water obligations under contracts, the Watermaster

1 shall allocate the Imported Water for delivery to areas on an equitable and practicable basis
2 pursuant to the Watermaster rules and regulations.

3 **9.2.1** The Non-Pumper Class Stipulation of Settlement, executed by its
4 signatories and approved by the Court in the Non-Pumper Class Judgment, specifically provides
5 for imposition of a Replacement Water Assessment on Non-Pumper Class members. This
6 Judgment is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. The
7 Non-Pumper Class members specifically agreed to pay a replacement assessment if that member
8 produced “more than its annual share” of the Native Safe Yield less the amount of the Federal
9 Reserved Right. (See Appendix B at paragraph V., section D. Replacement Water.) In approving
10 the Non-Pumper Class Stipulation of Settlement this Court specifically held in its Order after
11 Hearing dated November 18, 2010, that “the court determination of physical solution cannot be
12 limited by the Class Settlement.” The Court also held that the Non-Pumper Class Stipulation of
13 Settlement “may not affect parties who are not parties to the settlement.”

14 **9.2.2** Evidence presented to the Court demonstrates that Production by
15 one or more Public Water Suppliers satisfies the elements of prescription and that Production by
16 overlying landowners during portion(s) of the prescriptive period exceeded the Native Safe Yield.
17 At the time of this Judgment the entire Native Safe Yield is being applied to reasonable and
18 beneficial uses in the Basin. Members of the Non-Pumper Class do not and have never Produced
19 Groundwater for reasonable beneficial use as of the date of this Judgment. Pursuant to *Pasadena*
20 *v. Alhambra* (1949) 33 Cal 2d 908, 931-32 and other applicable law, the failure of the Non-
21 Pumper Class members to Produce any Groundwater under the facts here modifies their rights to
22 Produce Groundwater except as provided in this Judgment. Because this is a comprehensive
23 adjudication pursuant to the McCarran Amendment, consistent with the California Supreme Court
24 decisions, including *In Re Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339,
25 this Court makes the following findings: (1) certainty fosters reasonable and beneficial use of
26 water and is called for by the mandate of Article X, section 2; (2) because of this mandate for
27 certainty and in furtherance of the Physical Solution, any New Production, including that by a
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1 study, review and make recommendations on all discretionary determinations made or to be made
2 hereunder by Watermaster Engineer which may affect that subarea.

3 **20. MISCELLANEOUS PROVISIONS.**

4 **20.1 Water Quality.** Nothing in this Judgment shall be interpreted as relieving
5 any Party of its responsibilities to comply with State or Federal laws for the protection of water
6 quality or the provisions of any permits, standards, requirements, or orders promulgated
7 thereunder.

8 **20.2 Actions Not Subject to CEQA Regulation.** Nothing in this Judgment or
9 the Physical Solution, or in the implementation thereof, or the decisions of the Watermaster
10 acting under the authority of this Judgment shall be deemed a "project" subject to the California
11 Environmental Quality Act (CEQA). See e.g., *California American Water v. City of Seaside*
12 (2010) 183 Cal.App.4th 471, and *Hillside Memorial Park & Mortuary v. Golden State Water Co.*
13 (2011) 205 Cal.App.4th 534. Neither the Watermaster, the Watermaster Engineer, the Advisory
14 Committee, any Subarea Management Committee, nor any other Board or committee formed
15 pursuant to the Physical Solution and under the authority of this Judgment shall be deemed a
16 "public agency" subject to CEQA. (See Public Resources Code section 21063.)

17 **20.3 Court Review of Watermaster Actions.** Any action, decision, rule,
18 regulation, or procedure of Watermaster or the Watermaster Engineer pursuant to this Judgment
19 shall be subject to review by the Court on its own motion or on timely motion by any Party as
20 follows:

21 **20.3.1 Effective Date of Watermaster Action.** Any order, decision or
22 action of Watermaster or Watermaster Engineer pursuant to this Judgment on noticed specific
23 agenda items shall be deemed to have occurred on the date of the order, decision or action.

24 **20.3.2 Notice of Motion.** Any Party may move the Court for review of an
25 action or decision pursuant to this Judgment by way of a noticed motion. The motion shall be
26 served pursuant to Paragraph 20.7 of this Judgment. The moving Party shall ensure that the
27 Watermaster is served with the motion under that Paragraph 20.7 or, if electronic service of the
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1 Watermaster is not possible, by overnight mail with prepaid next-day delivery. Unless ordered by
2 the Court, any such petition shall not operate to stay the effect of any action or decision which is
3 challenged.

4 **20.3.3 Time for Motion.** A Party shall file a motion to review any action
5 or decision within ninety (90) days after such action or decision, except that motions to review
6 assessments hereunder shall be filed within thirty (30) days of Watermaster mailing notice of the
7 assessment.

8 **20.3.4 De Novo Nature of Proceeding.** Upon filing of a motion to review
9 a decision or action, the Watermaster shall notify the Parties of a date for a hearing at which time
10 the Court shall take evidence and hear argument. The Court's review shall be *de novo* and the
11 Watermaster's decision or action shall have no evidentiary weight in such proceeding.

12 **20.3.5 Decision.** The decision of the Court in such proceeding shall be an
13 appealable supplemental order in this case. When the Court's decision is final, it shall be binding
14 upon Watermaster and the Parties.

15 **20.4 Multiple Production Rights.** A Party simultaneously may be a member
16 of the Small Pumper Class and hold an Overlying Production Right by virtue of owning land
17 other than the parcel(s) meeting the Small Pumper Class definition. The Small Pumper Class
18 definition shall be construed in accordance with Paragraph 3.5.44 and 3.5.45.

19 **20.5 Payment of Assessments.** Payment of assessments levied by Watermaster
20 hereunder shall be made pursuant to the time schedule developed by the Watermaster,
21 notwithstanding any motion for review of Watermaster actions, decisions, rules or procedures,
22 including review of assessments implemented by the Watermaster.

23 **20.6 Designation of Address for Notice and Service.** Each Party shall
24 designate a name and address to be used for purposes of all subsequent notices and service herein,
25 either by its endorsement on this Judgment or by a separate designation to be filed within thirty
26 (30) days after judgment has been entered. A Party may change its designation by filing a written
27 notice of such change with Watermaster. A Party that desires to be relieved of receiving notices
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1 of Watermaster activity may file a waiver of notice in a form to be provided by Watermaster. At
2 all times, Watermaster shall maintain a current list of Parties to whom notices are to be sent and
3 their addresses for purpose of service. Watermaster shall also maintain a full current list of said
4 names and addresses of all Parties or their successors, as filed herein. Watermaster shall make
5 copies of such lists available to any requesting Person. If no designation is made, a Party's
6 designee shall be deemed to be, in order of priority: (1) the Party's attorney of record; (2) if the
7 Party does not have an attorney of record, the Party itself at the address on the Watermaster list;
8 (3) for Small Pumper Class Members, after this Judgment is final, the individual Small Pumper
9 Class Members at the service address maintained by the Watermaster.

10 **20.7 Service of Documents.** Unless otherwise ordered by the Court, delivery to
11 or service to any Party by the Court or any Party of any document required to be served upon or
12 delivered to a Party pursuant to this Judgment shall be deemed made if made by e-filing on the
13 Court's website at www.scefiling.org. All Parties agree to waive service by mail if they receive
14 notifications via electronic filing at the above identified website.

15 **20.8 No Abandonment of Rights.** In the interest of the Basin and its water
16 supply, and the principle of reasonable and beneficial use, no Party shall be encouraged to
17 Produce and use more water in any Year than is reasonably required. Failure to Produce all of the
18 Groundwater to which a Party is entitled shall not, in and of itself, be deemed or constitute an
19 abandonment of such Party's right, in whole or in part, except as specified in Paragraph 15.

20 **20.9 Intervention After Judgment.** Any Person who is not a Party or
21 successor to a Party and who proposes to Produce Groundwater from the Basin, to store water in
22 the Basin, to acquire a Production Right or to otherwise take actions that may affect the Basin's
23 Groundwater is required to seek to become a Party subject to this Judgment through a noticed
24 motion to intervene in this Judgment prior to commencing Production. Prior to filing such a
25 motion, a proposed intervenor shall consult with the Watermaster Engineer and seek the
26 Watermaster's stipulation to the proposed intervention. A proposed intervenor's failure to consult
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