

Case No. F075451

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
FIFTH APPELLATE DISTRICT**

ANTELOPE VALLEY GROUNDWATER CASES

**APPELLANT'S APPENDIX
For Appeal filed on May 17, 2018**

On Appeal From the Superior Court for the State of
California, County of Los Angeles, Case No. JCCP 4408,
Hon. Jack Komar

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DISTRICT

APPELLANT /CROSS-RESPONDENT INDEX

ANTELOPE VALLEY GROUNDWATER CASES; PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT V. ANTELOPE VALLEY
WATERMASTER, ET AL.

5 CIVIL F075451

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APPELLANT /CROSS-RESPONDENT INDEX

ANTELOPE VALLEY GROUNDWATER CASES; PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT V. CALIFORNIA WATER SERVICE COMPANY, ET AL.

5 CIVIL F075451

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TAB 1

COPY

[Exempt From Filing Fee
Government Code § 6103]

By Fax

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Phelan Piñon Hills Community Services District

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 20 2018

Sherri R. Carter, Executive Officer/Clerk
Cristina Alvarez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Included Actions:

*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
No. BC 325 201

*Los Angeles County Waterworks District
No. 40 v.
Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
S-1500-CV-254-348

*Wm. Bolthouse Farms, Inc. v. City of
Lancaster*
Diamond Farming Co. v. City of Lancaster
*Diamond Farming Co. v. Palmdale Water
Dist.*
Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
840, RIC 344 436, RIC 344 668

AND RELATED CROSS-ACTIONS

Case No. Judicial Council Coordination
Proceeding No. 4408

(For Filing Purposes Only: Santa Clara
County Case No.: 1-05-CV-049053)

**PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S NOTICE OF
MOTION AND MOTION FOR
DECLARATORY RELIEF RE
JUDGMENT ENTERED DECEMBER 23,
2015 AND WATERMASTER
RESOLUTION NO. R-18-04 REGARDING
REPLACEMENT WATER
ASSESSMENTS FOR 2016 AND 2017;
DECLARATION OF JUNE S. AILIN IN
SUPPORT THEREOF**

Assigned for All Purposes To:
Hon. Jack Komar

Date: 4/18/2018

Time: 9:00 a.m.

Place: Room 222, Los Angeles County
Superior Court, Stanley Mosk
Courthouse, Los Angeles, CA

01133.0012/456889.2

-1-

PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION FOR
DECLARATORY RELIEF



1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on April 18, 2018 at 9:00 a.m. or as soon thereafter as this
3 matter may be heard in Room 222 of the Stanley Mosk Courthouse, Los Angeles County Superior
4 Court, 111 No. Hill St., Los Angeles, CA , Cross-Defendant Phelan Piñon Hills Community Services
5 District (“Phelan”) will, and hereby does, move for declaratory relief regarding its rights and
6 obligations under the Judgment entered in the above-captioned action on December 23, 2015 and
7 Watermaster Resolution No. R-18-04 regarding the payment of Replacement Water Assessments by
8 Phelan for 2016 and 2017.

9 This Motion is based on this Notice, the attached Memorandum of Points and Authorities,
10 Declaration of June S. Ailin and Exhibits 1 through 4, and on any other evidence and argument that
11 may be presented on or before hearing on this matter.

12
13 DATED: March 19, 2018

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
STEPHEN R. ONSTOT

14
15
16 By: 

17 STEPHEN R. ONSTOT
18 Attorneys for Phelan Piñon Hills Community
19 Services District
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On December 23, 2015, the Court signed a Judgment in the above-captioned action (“Judgment”), which included in Exhibit A to the Judgment the conditions of a physical solution for the Antelope Valley Adjudication Area under which parties would pay “Replacement Water Assessments” in certain circumstances. Phelan contends that under the Judgment it is not obligated to pay Replacement Water Assessments for water pumped during the first two calendar years after entry of the Judgment, which are also the first two years of a seven-year “rampdown period” (i.e., 2016 and 2017) during which no party to the Judgment is required to pay Replacement Water Assessments. On January 24, 2018 the Antelope Valley Watermaster (“Watermaster”) voted to direct staff to impose Replacement Water Assessments (unspecified in amount) on Phelan for 2016 and 2017.

Accordingly, via the instant Motion, Phelan seeks a judicial determination of its rights and obligations under the Judgment regarding replacement water assessments for 2016 and 2017 for the following reasons:

- Section 8.3 of Exhibit A to the Judgment provides: “During the first two Years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment.”
- Section 3.5.30 of Exhibit A to the Judgment defines “Producer(s)” as “a Party who Produces Groundwater.” It is undisputed that Phelan is a Party and produces groundwater.
- On January 24, 2018, the Watermaster Board adopted Resolution No. R-18-04 imposing Replacement Water Assessments on Phelan for 2016 and 2017.
- In its February 5, 2018 Order After Hearings On January 31, 2018, the Court found the definition of “Producer” in Exhibit A to the Judgment to be unqualified.
- Phelan exhausted its administrative remedies.

Accordingly, a dispute exists between Phelan and the Watermaster as to Phelan's rights and remedies under the Judgment. For the reasons set forth below, Phelan requests that the Court remain consistent with its February 5, 2018 Order and find that Phelan is not subject to Replacement Water Assessments for 2016 and 2017.

II. STATEMENT OF RELEVANT FACTS

A. The December 23, 2015 Judgment Holds That Phelan Is Not Subject To A Replacement Water Assessment During The First Two-Years Of The Seven-Year Rampdown Period

The first sentence of Section 8.3 of Exhibit A to the Judgment¹ states:

"During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment."

The "first two Years of the Rampdown Period" are calendar years 2016 and 2017. (See Sections 3.5.55, 8.2, Exhibit 3, pp. 35, 38.) A "Producer" is a "Party who Produces Groundwater." Section 3.5.30. Phelan is a "Party," and Phelan Produces Groundwater." Sections 3.5.27, 3.5.29, 3.5.14, and 6.4.1.2. (Ex. 3, p. 29, 31, 36.) As such, Phelan is a "Producer," and pursuant to the express terms of the Judgment, Producers are not subject to Replacement Water Assessments for 2016 and 2017.

B. This Court's February 5, 2018 Order Interpreting the Judgment Holds That Phelan Is Not Subject To A Replacement Water Assessment In 2016 and 2017

On February 5, 2018 this Court ruled on motions related to interpretation of the Judgment, i.e., declaratory relief, for "...the producers cannot pump water from the aquifer not knowing what the water replacement obligations are..." (See Order After Hearings On January 31, 2018 ("Order"), Ex. 2, p. 19, 5:14-15 (emphasis added).) In such ruling, the Court specifically found that "Producers" means parties that produce groundwater and that it is *unqualified* as to what type of "Producers"

¹ All further references to "Sections" of the Judgment are references to the section numbers in Exhibit A to the Judgment.

receive the benefit of the Rampdown provisions. (See Order, Ex. 2, p. 22-23, 8:28-9:3 (emphasis added).) Nothing in the definition of “Producers” excludes Phelan.

Further, this Court’s Order states:

It must be emphasized that the court’s approval of the physical solution in fact, based upon competent evidence, contemplated that *all parties* would have the benefit of the 7 year rampdown process and that the physical solution would achieve a balanced aquifer during the specified period. No party objected or provided contrary evidence or argument during the approval process.

(Exhibit 2, p. 24, 10:3-8 [emph. added].) Because Phelan is a Party, Phelan is not required to pay replacement water assessments for the first two Years, 2016 and 2017.

C. The Watermaster Votes To Impose An Unspecified Replacement Water Assessment On Phelan

Despite the plain language of the Judgment, on January 24, 2018 the Watermaster adopted Resolution R-18-04 authorizing its staff to impose Replacement Water Assessments (unspecified in amount) on Phelan for 2016 and 2017. (See Exhibit 1 attached hereto and incorporated herein by this reference.)²

III. ARGUMENT

A. The Instant Motion Is Timely And Proper

Section 6.5 of the Judgment states that the Court is to retain jurisdiction over its interpretation and enforcement. (Ex. 3, pp. 36-37.) Section 20.3 states that the Court may review actions of the Watermaster via motion, and Section 20.3.3 states that motions regarding Watermaster actions may be made within 90 days after the action was taken. (Ex. 3, pp. 42, 43.) Accordingly, the instant Motion is timely because the Watermaster’s action directing its staff to impose Replacement Water Assessments took place on January 24, 2018.³

² Phelan has exhausted its administrative remedies on this issue. See Declaration of June S. Ailin attached hereto, ¶¶ 5, 6, 7.

³ Note that Section 20.3.3 also states that motions to “review assessments” must be made within 30 days after mailing of notice of the assessment; however, because no assessment amount has been

Code of Civil Procedure section 1060 states, in relevant part:

Any person interested under a written instrument... or who desires a declaration of his or her rights or duties with respect to another... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an ... action for a declaration of his or her rights and duties ... including a determination of any question of construction or validity arising under the instrument... The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought.

Accordingly, the instant Motion for declaratory relief is proper to determine Phelan's rights and duties under the Judgment as to Replacement Water Assessments for 2016 and 2017.

B. Pursuant To Customary Rules Of Document Construction, Phelan Is Not Subject To Replacement Water Assessments for 2016 and 2017

1. The "Plain Meaning" of Section 8.3 Dictates Its Interpretation.

It is basic hornbook law that the plain meaning of a provision prevails when it is clear and unambiguous. (*People v. Superior Court* (Ghilotti) (2002) 27 Cal.4th 888, 905.) The first sentence of Section 8.3 of the Judgment clearly and unambiguously states:

"During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment."

(Ex. 3, p. 38.)

This language is not modified in any way and is, indeed, quite emphatic. Code of Civil Procedure section 1861 states:

The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

specified or imposed as to Phelan for 2016 and 2017, there was no notice of assessment mailed and, hence, there is no assessment to be reviewed. The instant Motion is for declaratory relief, not a challenge to an assessment amount. As such, the 90 day limitations period applies.

As noted above, in this case, the parties were meticulous in defining terms applicable to Section 8.3, specifically defining “Year,” “Party,” “Producer,” “Produce(d),” and “Groundwater” among others. (Ex. 3, pp. 29, 31, 33.) There is no ambiguity or uncertainty in such definitions; in fact, the very purpose for defining a term is to make sure the term is used in a manner consistent with the parties’ intent. As such, there can be no doubt that Phelan is a “Producer,” a Party that produces Groundwater. “Producer” is not limited to Parties that have Production Rights.

Importantly, in its February 5, 2018 Order, the Court read Section 8.3 exactly the same way when determining that public water suppliers are included in the provisions of Section 8.3, stating that it “specifically refers to producers *without qualification*.” (Order, Ex. 2, pp. 21-22, 7:22-8:1 [emph. added].) The Court should render the same holding here, as consistency in interpretation of the Judgment is important in making it intelligible to those who are bound by it.

In sum, the plain meaning of the first sentence of Section 8.3 compels the conclusion that Phelan is not subject to Replacement Water Assessments for Groundwater pumped in 2016 and 2017.

2. All Parts of the Judgment Must Be Given Effect , If Reasonable To Do So.

Entry of the Judgment was not unilaterally directed by the Court, it was *stipulated to* by parties representing a substantial portion of the production of groundwater in the basin. Such circumstance is important, for it may reasonably be inferred that the stipulating parties knew *exactly* what the Judgment said, including the simple statement in Section 8.3 that during the first two years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment. The Judgment does *not* state that “no Producer except Phelan” will be subject to the assessments, nor does it say that only Producers with Production Right or Producers subject to pumping restrictions during the Rampdown Period are subject to the assessments.⁴ Section 6.4.1.2 (Ex. 3, p. 36) does not state Phelan

⁴ Other terms in the Judgment potentially pertinent to the issue before the Court are similarly defined without restriction. A “Party (Parties)” is “[a] Person(s) that has (have) been named and served or otherwise properly joined, or has (have) become subject to this Judgment and any prior judgments of this Court in this Action and all their respective heirs, successors-in-interest and assigns. For purposes of this Judgment, a ‘Person’ includes any natural person, firm, association, organization, joint venture, partnership, business, trust, corporation, or public entity.” Judgment, Section 3.5.27. “Produce(d)” means “[t]o pump Groundwater for existing and future reasonable beneficial uses.” Judgment, Section 3.5.29.

is to be treated different from other parties for purposes of the commencement of liability for Replacement Water Assessments. In addition, none of the terms pertinent to resolution of the issue now before the Court are limited so as to apply only to stipulating parties. Certainly, if the intent of the parties was to exclude Phelan from the assessment “grace period,” they could have said so in the Judgment. But they did not. Code of Civil Procedure section 1858 states:

In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

Given this law, the question then becomes “what effect can possibly be given to the first sentence of Section 8.3 *other than* to include Phelan in the class of Producers that are not required to pay Replacement Water Assessments in 2016 and 2017?” The answer is: none. As Code of Civil Procedure section 1858 teaches, it is not for the court “...to insert what has been omitted, or to omit what has been inserted...”

Accordingly, this Court should refrain from adding qualifiers to the defined terms “Party” and “Producer” when none exist, and should not omit Phelan from the class of “Parties” and “Producers” when there is no evidence of any Party’s, or the Court’s, intent to do so.

IV. CONCLUSION

For all of the foregoing reasons, the Court should find that the Judgment does not obligate Phelan to pay Replacement Water Assessments for 2016 and 2017 and that Watermaster Resolution No. R-18-04 is invalid and of no force and effect because it is inconsistent with the Judgment.

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1 DATED: March 19, 2018

ALESHIRE & WYNDER, LLP
JUNE S. AILIN
STEPHEN R. ONSTOT

4 By:

5 
STEPHEN R. ONSTOT
Attorneys for Phelan Piñon Hills Community
Services District

12 ALESHIRE &
WYNDER LLP



DECLARATION OF JUNE S. AILIN

I, June S. Ailin, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Aleshire & Wynder, LLP, attorneys of record for Defendant and Cross-Complainant Phelan Piñon Hills Community Services District. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the matters stated herein. I make this declaration in support of Phelan's Motion for Declaratory Relief Re Judgment Entered December 23, 20015 and Water master Resolution No. R-18-04 Regarding Replacement Water Assessments for 2016 and 2017.

2. Attached hereto as Exhibit 1 is a true and correct copy of Resolution No. R-18-04 of the Antelope Valley Watermaster, dated January 24, 2018, Re: Replacement Water Assessments for the Phelan Pinon Hills Community Services District.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Order After Hearings On January 31, 2018 in the above-captioned matter entered on February 5, 2018.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from Exhibit A to the Judgment entered on December 28, 2015 containing the portions of that document pertinent to this Motion.

5. In July 2017, the issue of whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 came up in the context of the Watermaster's 2016 draft annual report. I sent a letter to the Watermaster Engineer on this issue dated July 19, 2017. On August 23, 2017, at a meeting of the Watermaster Board, the question whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 was presented to the Watermaster Board as an agenda item. I was present at that meeting and addressed the Watermaster Board on Phelan's behalf on that issue, taking the position that Phelan, like any other Producer, was not required to pay Replacement Water Assessments for 2016 and 2017, the first two years of the Rampdown Period.

6. Attached hereto as Exhibit 4 is a true and correct copy of the staff report to the Watermaster Board presented at the August 23, 2017, Watermaster Board meeting, with a copy of my July 19, 2017 letter attached.

7. The issue of whether Phelan is liable for Replacement Water Assessments for 2016 and 2017 came up again on the Watermaster Board's agenda for January 24, 2018, with the proposal that the Watermaster Board adopt Resolution No. R-18-04. I attended the January 24, 2018 meeting of the Watermaster Board and again addressed the Watermaster Board on Phelan's behalf on that issue, again taking the position that Phelan, like any other Producer, was not required to pay Replacement Water Assessments for 2016 and 2017, the first two years of the Rampdown Period.

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

Executed on this 19 th day of March, 2018, at El Segundo, California.


June S. Ailin

EXHIBIT 1

RESOLUTION NO. R-18-04

**APPROVING JANUARY 5, 2018 MEMORANDUM OF WATERMASTER
GENERAL COUNSEL RELATING TO LEGAL ISSUE RAISED BY PHELAN
PINON HILLS COMMUNITY SERVICES DISTRICT ("PPHCSD") AND
FINDING THAT PPHCSD IS OBLIGATED TO PAY A REPLACEMENT
WATER ASSESSMENT FOR ITS PRODUCTION IN 2016 AND 2017**

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment ("Judgment") Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, requested at its Special Board meeting on December 6, 2017 that its General Counsel provide a legal opinion as whether Phelan Pinon Hills Community Services District ("PPHCSD") is obligated to pay a Replacement Water Assessment for its Production in 2016 and 2017 within the Adjudication Area of the Antelope Valley (all of which said Production is exported from the Adjudication Area);

WHEREAS, General Counsel has provided the opinion requested in a memorandum dated January 5, 2018 and has concluded that PPHCSD is obligated to pay a Replacement Water Assessment for its Production in 2016 and 2017; and

WHEREAS, the Watermaster agrees with the legal opinion expressed in the January 5, 2018 memorandum from its General Counsel and wishes to direct Watermaster staff to impose those assessments pursuant to Section 9.2 of the Judgment.

NOW THEREFORE BE IT RESOLVED, the Watermaster Board unanimously approves the imposition of a Replacement Water Assessment for Production by PPHCSD in 2016 and 2017 pursuant to Section 9.2 of the Judgment and directs Watermaster staff to impose those assessments according to the terms of the Judgment.

I certify that this is a true copy of Resolution No. R-18-04 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held January 24, 2018, in Palmdale, California.

Date: 1/24/18

ATTEST: 

Patricia Rose – Interim Secretary


Robert Parris, Chairman

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

**ORDER AFTER HEARINGS ON
JANUARY 31, 2018: (1) Antelope
Valley Watermaster's Motion for
Order Interpreting the Judgment
Regarding Pre-Rampdown
Production and Carry Over Water
Rights; (2) LACWD 40's Motion
Under Sections 6.5 of the Physical
Solution for Interpretation of
Judgment Confirming Applicability of
Rampdown and Carryover Rights to
Public Water Suppliers**

Judge: Honorable Jack Komar, Ret.

*Antelope Valley Groundwater Litigation (Consolidated Cases) (JCCP 4408)
Superior Court of California, County of Los Angeles, Lead Case No. BC 325 201
Order After Hearings on January 31, 2018*

1 **This Document Pertains to Add-On Case:**

2 Little Rock Sand and Gravel, Inc., a California
3 corporation v. Granite Construction Company
4 Superior Court of California
County of Los Angeles, Case No. MC026932

6 The above-entitled matters came on regularly for hearing on January 31, 2018 at 9:00
7 a.m. in the Superior Court of California, County of Los Angeles, Room 222, the Honorable
8 Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having
9 read and considered the supporting and opposing papers, and having heard and considered the
10 arguments of counsel, and good cause appearing therefore, makes the following order:

11 The parties have filed, briefed and noticed for hearing three separate but related post
12 judgment motions requesting an interpretation of provisions of the stipulated judgment in this
13 matter.

14 All three of the motions in one form or other essentially address the same issue:
15 whether the provisions of Section 8.3 of the Judgment and Stipulation apply to only the parties
16 listed in Exhibit 4 to the Judgment or whether certain other parties also are accorded the benefit
17 of the limitations on imposition of the Replacement Water Assessments during the rampdown
18 period.¹

19 Thus, the issue is whether the during the years three through seven, commencing
20 January 1, 2018, if the public water producers reduce pumping in equal annual increments
21 until each reaches the production rights set forth in Exhibit 3 to the Judgment at the conclusion
22 of the ramp down period, December 31, 2023 may the Watermaster assess replacement water
23 charges pursuant to Section 9.2 for the difference between the post-rampdown production
24 right and the amount actually pumped or may the public water producers pump an annually
25 reduced amount for those five years paying only if they exceed the reduced quantity for the
26 year.

27
28 ¹ All references to "sections" are to the sections in the judgment unless otherwise noted.

1 The court has read and considered the moving and opposing briefs, heard oral
2 argument, and ordered the matters submitted.

3
4 **1. Antelope Valley Watermaster's Motion for Order Interpreting the Judgment**
5 **Regarding Pre-Rampdown Production and Carry Over Water Rights**

6 "The Watermaster" which was created pursuant to the stipulation and judgment
7 entered herein has filed a motion under the provisions of Section 6.5 of the Judgment
8 requesting that the court clarify whether certain parties to the judgment are entitled to the
9 benefits of the provisions of Section 8.3 which limits water replacement assessments during the
10 Section 8.2 rampdown period.

11 There is objection by certain Public Water Supplier parties to the standing of the
12 Watermaster to file its motion. The objection to the Watermaster's standing to bring this
13 motion is overruled.

14 The Watermaster is an entity established in conformity to the Judgment herein to
15 administer the physical solution created by the judgment. The Watermaster is comprised of an
16 elected representative board which employs an executive officer and technical and
17 administrative staff. It is in effect an arm of the court created by the court to manage the
18 physical solution to the aquifer overdraft.

19 The Watermaster is charged with developing administrative rules and to monitor and
20 carry out the provisions of the Judgment and the physical solution.

21 Section 18 et seq. of the judgment specifies that the Watermaster has the duty to
22 prepare rules for the monitoring and development of the physical solution and enforcement of
23 the judgment. Section 18.7 provides for application to the court and authorizes the court to take
24 or approve any actions that the Watermaster would be authorized to take or approve under the
25 judgment.

26 The Watermaster Board is in the process of developing and approving rules to
27 administer the physical solution as required by the judgment and can only act upon a
28 unanimous vote. The Watermaster Board is divided on the issue of the application of

1 certain portions of the judgment relating to the rampdown provisions during the first seven
2 years following the entry of judgment. Thus, the Watermaster requests that the court rule on
3 whether it must apply the Section 8.3 exemption to the public water producers for the five year
4 period commencing January 1, 2018.

5 Summarizing the Watermaster Motion, the issue presented by the Watermaster is
6 whether the parties listed in Exhibit 3 to the Judgment but not listed in Exhibit 4 to the
7 Judgment, and not otherwise included or excluded, are entitled to the benefit of Section 8.3 of
8 the Judgment for the period between January 1, 2018 and December 31, 2023.

9 Judgment Section 5.1.1 et seq. refers to Exhibit 4, which lists all stipulating overlying
10 producing owners with pre-rampdown and post-rampdown production quantifications.

11 Judgment Section 5.1.6 provides for Non Overlying Production Rights: The public
12 water supplier parties listed in Exhibit three have production rights in the agreed to amounts
13 listed in the exhibit but there is no specification of pre-judgment water production
14 quantifications.

15 It is noted that Section 8.3 does not contain references to either Sections 5.1.1 et seq.,
16 5.1.6, or either Exhibits 3 or 4.

17 Counsel for the Watermaster has provided an objective, neutral analysis of the issue
18 and has requested the court to determine which position it should follow.

19 The Watermaster board must unanimously adopt a rule regarding these issues to enable
20 it to administer the physical solution.

21
22 **2. LACWD 40's Motion Under Sections 6.5 of the Physical Solution for**
23 **Interpretation of Judgment Confirming Applicability of Rampdown and**
24 **Carryover Rights to Public Water Suppliers**

25 The Public Water Producers, non-overlying water producers, have also filed a motion
26 requesting the court to interpret the-rampdown provisions of the judgment. The issue presented
27 is essentially the same as the issue presented by the Watermaster, namely, whether the parties
28 who are listed in Exhibit Three to the judgment are entitled to the benefit of Section 8.3 of the

1 judgment permitting them to reduce their water production over a period described as the
2 “rampdown period” without paying a replacement water assessment each year under the
3 provisions of Section 9.2, as they gradually reduce their water production to the stipulated
4 entitlement. Of course, any production over the annual reduced right would be subject to such
5 assessment, subject to Section 8.4 (Drought Conditions).

6 In addition, these Public Water Producer parties have also requested and then
7 withdrawn a request to interpret certain “carry-over” provisions provided for in the judgment.
8 That request will not be considered because it has been withdrawn.

9 A Motion has also been filed by Clan Keith Real Estate Investments, LLC (hereinafter
10 Clan Keith), a party who did not stipulate to the judgment but who is a “supporting party” and
11 bound by the terms of the judgment. Clan Keith is, an overlying land owner doing business as
12 Leisure Lake Mobile Estates, requesting the benefit of the provisions of Sections 8.2 and 8.3.

13 Essentially, all of the above motions are in the form of declaratory relief. The water
14 producers and Clan Keith cannot pump water from the aquifer without knowing what the
15 replacement water obligations are and the board cannot prepare rules implementing the
16 physical solution without the court’s interpretation of the terms of the judgment. The issues are
17 ripe for decision.

18 The question requires interpretation of the stipulated agreement between the parties and
19 the court’s judgment. All parties contend that the stipulation and judgment is clear on its face.
20 No party has offered parol or extrinsic evidence to interpret the stipulation or the judgment.

21 The Judgment signed on December 23, 2016 and entered thereafter adopted and
22 incorporated into its terms a “physical solution” to remedy a severe overdraft situation in the
23 Antelope Valley adjudication area. The physical solution was stipulated to by the vast majority
24 of parties to this coordinated proceeding.

25 In seeking approval of the stipulation and proposed judgment the parties to the
26 stipulation offered evidence and argument to justify and support the stipulation.

27 The court made independent findings based on the evidence submitted and found that
28 the then stipulated proposed physical solution was an effective mechanism to stop the overdraft

1 and restore the aquifer to health, adopting the stipulation in its entirety and incorporating it into
2 the judgment, thereby binding all stipulating and non-stipulating parties to its terms.

3 Based upon the testimony of experts offered without objection, or contradiction, the
4 court found that the then proposed physical solution, which included a gradual reduction of
5 pumping by a large number of water producers in the valley, both overlying owners and public
6 water producers, over a period of seven years would result in a reduction of pumping within
7 the aquifer to an amount not exceeding the safe yield after the seventh year following the
8 judgment, thereby preventing further overdraft and restoring the balance to the aquifer in the
9 Antelope Valley adjudication area.

10 The purpose of the expert testimony was clearly understood by the parties. A counsel
11 for the Public Water Suppliers stated on the record in advance of the testimony: “(expert) has
12 developed a model which can be used to show over time how the physical solution will impact
13 the basin. And it should come as no surprise that we are offering this to show that in fact it is a
14 physical solution.”

15 Counsel for a Landowner Party also commented on the record in advance of that expert
16 testimony that “none of the land owner parties are objecting to that (expert testimony) beyond
17 reserving the right to challenge a model, if necessary, in the future, to have contribution to a
18 model in the future, to have a model in the future vetted which will be used for purposes of . . .
19 which will be the ultimate model that is used.”

20 The experts’ testimony evaluated the methodology of the proposed physical solution
21 and the stipulation, which included a production ramp down of pumping for all parties on
22 Exhibits 3 and 4 as an implementation of the physical solution over the 7 year period. The
23 expert opinions included both the Exhibit 3 Public Water Suppliers as well as the Exhibit 4
24 overlying land owners in the application of the Section 8.3 provisions for the seven year ramp
25 down period.

26 The expert opinions were based on the provisions of the stipulation and court’s
27 previous phase statements of decision, subject to the specifics in the proposed judgment and
28 the stipulation. The testimony provided justification for the efficacy of the physical solution,

1 showing how the rampdown process would be able to bring the basin into balance within 7
2 years.

3 The expert opinions posited that the physical solution would be effective to eliminate
4 the overdraft and restore the basin to balance including all water producers in the gradual
5 rampdown over the projected seven year period.

6 The physical solution provides for a seven year period for restoration of the aquifer to
7 bring it into balance, commencing January 1, 2016 (Section 8.2); Section 8.3 provides for a
8 gradual reduction of all pumping from the native yield until the aquifer is in equilibrium and
9 limits the Replacement Water Assessments to pumping which exceeds the annual reduced
10 water production; Section 5.1.1 is very specific with Exhibit 4 which specifies both pre and
11 post rampdown production numbers overlying producers. On the other hand, Section 5.1.6
12 only provides the final production quantities for the Public Water Producers and makes no
13 reference to pre rampdown production.

14 The parties who object to the Public Water Producers and the Clan Keith positions
15 argue that because there are no pre-judgment water production numbers in the judgment for
16 those parties as reflected in Exhibit 4, it shows an intent that Exhibit 3 parties are not intended
17 to have the benefit of Sections 8.2 and 8.3 in the judgment, and because the only production
18 rights listed for them and Clan Keith are post rampdown quantities, any water extraction
19 after January 1, 2018 that exceeds the post-rampdown production right as shown in Exhibit 3
20 or elsewhere in the judgment is subject to a replacement water assessment pursuant to Section
21 9.2.

22 The opposing overlying pumpers do agree that there are to be no replacement water
23 assessments for any party for a period of 2 years, between January 1, 2016 and December 31,
24 2017, as specified in Section 8.3, during which all stipulating producers may pump from the
25 aquifer without a water replacement assessment. That clearly places all water producers, both
26 Exhibit 3 and Exhibit 4 parties, and supporting but non-stipulating parties who are bound by
27 the judgment, within the provisions of 8.3.

1 Section 8.3 specifically refers to producers without qualification as to public water
2 producers/purveyors or overlying owners. "Producers" is defined in the judgment Section
3 3.5.30 "as a party who produces ground water."

4 If a party produces more water than its rampdown allocation, an assessment may be
5 imposed to purchase water to replenish the over-pumped water. Section 9.2. provides for
6 replacement water assessments for pumping that exceeds the production right (plus return
7 flows from imported water) to be used to replace the excess pumping.

8 Section 8.4 is also helpful in determining the parties who may participate in the
9 Rampdown program. Section 8.4 provides for a drought management program for the public
10 water producers in the event of a drought occurring during the operation of the "rampdown
11 period. 8.3 specifically provides that "except as determined to be exempt during the
12 Rampdown Period pursuant to the drought program provided for in Section 8.4 (only the
13 Public Water Producers are included in 8.4), any amount produced over the required
14 reduction shall be subject to replacement water assessment." (italics added for emphasis). The
15 referral to "required reduction" further indicates that the public water producers are included
16 within the purview of Section 8.3.

17 As indicated above, pre and post rampdown production levels for the overlying
18 landowner parties are specified in Section 5.1.1 and Exhibit 4 to the judgment. The public
19 water suppliers are not listed in Exhibit 4 but rather are listed with production rights post
20 rampdown only in Exhibit 3 to the judgment. Neither Pre-rampdown production rights nor
21 groundwater rights are listed for the public water producers in the judgment. While pumping
22 numbers for the public water producers are listed in the Phase 4 Statement of Decision, those
23 numbers are total pumping numbers, including return flows from imported water, and do not
24 fairly represent the pre-rampdown native safe yield production right.

25 CONCLUSION

26 The court concludes that the public water producers are included in the provisions of
27 Section 8.3. The specification that "during the first two years of the Rampdown Period no
28

1 *producer* shall be subject to a Replacement Water Assessment . . .” (emphasis added) is
2 unqualified. It does not limit the definition of “producers” to landowner or overlying owner
3 parties. While Section 3.5.26 defines “overlying production rights” as those rights held by the
4 parties listed on Exhibit 4 to the judgment, which includes landowner parties, “producers” is
5 defined as “a party who produces Groundwater.” Section 3.5.30. The court explicitly adopts
6 the production limits pre-rampdown agreed to by the parties in Exhibit 4 as well as the
7 production rights to which each is entitled post-rampdown.

8 Post-rampdown production rights are quantified for the public water producers in
9 Exhibit 3 to the judgment and Section 3.5.28 defining pre-rampdown production as “the
10 reasonable and beneficial use of groundwater,” or the production right, whichever is greater,
11 provides a method for calculating what the annual reduced production should be.

12 Both the Public Water Producers and Clan Keith meter their pumping and clear records
13 of pumping are reflected in the evidence produced for the court. To the extent that imported
14 water is included in the pumping records, evidence of imported water quantities is also
15 available.

16 Section 5.1: provides that “...all the productions rights are of equal priority”
17 (excepting only the Federal reserve rights and the small pumper class).

18 The physical solution scheme is designed to gradually reduce pumping in the valley.
19 All parties suffer the economic pain caused by reduced water rights and the requirement to
20 purchase replacement water above their allocation. The physical solution adopted by the court
21 contemplates that all producers will be reducing water production pursuant to 8.2 and 8.3.

22 No party is penalized if the Public Water Suppliers also have the advantage of the
23 rampdown period. If the Public Water Providers are accorded the five year progressive
24 reduction right, there is no effect whatsoever upon any other party in the case. It neither
25 increases their costs nor affects their ability to pump their production right. If the Public Water
26 Producers are not accorded the right to progressively reduce their pumping over the five year
27 period, and are required to purchase replacement water based on the post-rampdown
28 production quantification the Public Water Producers suffer the penalty alone but no benefit

1 accrues directly to any of the overlying land owners. Under that scenario, water levels remain
2 the same because of the purchased replacement waters and no change occurs in the aquifer
3 (other than the change that will occur with all parties benefitting from the physical solution). It
4 must be emphasized that the court's approval of the physical solution in fact, based upon
5 competent evidence, contemplated that all parties would have the benefit of the 7 year
6 rampdown process and that the physical solution would achieve a balanced aquifer during the
7 specified period. No party objected or provided contrary evidence or argument during the
8 approval hearing.

9 Accordingly, the Watermaster must in developing and approving its rules for
10 implementation of the physical solution accord the benefit to the Public Water Producers
11 moving parties here as well as the Clan Keith party the benefit of Sections 8.1 and 8.2, and 8.3.
12 The provisions of Section 18 and following provide an ample basis for the Watermaster and
13 the Watermaster Engineer, and others to determine the appropriate reduced pumping for both
14 the Public Water Suppliers and Clan Keith.

15 SO ORDERED.

16
17 Dated: February 5, 2018


18 
19 Hon. Jack Komar (Ret.)
20 Judge of the Superior Court
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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
28

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.

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

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

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

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

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

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

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

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

3.5.38 Recycled Water. Water that, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is 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
28

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.

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

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

3.5.55 Year. Calendar year.

4. SAFE YIELD AND OVERDRAFT

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

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

5. PRODUCTION RIGHTS

5.1 Allocation of Rights to Native Safe Yield. Consistent with the goals of this Judgment and to maximize reasonable and beneficial use of the Groundwater of the Basin pursuant to Article X, section 2 of the California Constitution, all the Production Rights established by this Judgment are of equal priority, except the Federal Reserved Water Right which is addressed in Paragraph 5.1.4, and with the reservation of the Small Pumper Class 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

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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EXHIBIT 4



August 17, 2017

REVISED DRAFT MEMORANDUM

To: Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

Robert Parris, Chair
Antelope Valley Watermaster Board of Directors

From: Phyllis Stanin, Vice President/Principal Geologist
Kate White, Senior Engineer
Todd Groundwater, Watermaster Engineer

Re: Phelan Piñon Hills Community Services District
2016 Production and Potential Replacement Water Obligation

In the Draft Antelope Valley Watermaster 2016 Annual Report (published on the Watermaster website July 12, 2017), Todd Groundwater listed 2016 production of 770.63 AF for Phelan Piñon Hills Community Services District (Phelan). The Judgment allows Phelan to produce up to 1,200 AFY for its service area, providing no Material Injury and subject to a Replacement Water Assessment (§9.2). Because of this section in the Judgment, Todd Groundwater assumed that the production was subject to a Replacement Water Assessment; accordingly, Phelan was identified in the Draft report as having a Replacement Water Obligation (see Appendix J and Sections 1.5.2 and 3.3.2 of the Draft report).

On July 19, Todd Groundwater discussed the issue of Phelan's Replacement Water Obligation with June S. Ailin, Partner with Aleshire & Wynder LLP and legal counsel to Phelan. In that conversation and in a follow-up letter dated July 19, 2017, Ms. Ailin requested corrections to the Administrative Draft¹ 2016 Annual Report. In particular, she requested that Phelan be identified as a "Producer" as defined by the Judgment and stated that no Producer is subject to a Replacement Water Assessment during the first two years of the Rampdown Period (i.e., 2016 and 2017). Ms. Ailin's letter is attached to this memorandum as **Attachment 1**.

At a Public Hearing on the Draft 2016 Annual Report (July 26, 2017), Mr. Don Bartz, Phelan General Manager, reiterated its position that, as a Producer, it was eligible for a two-year exemption from a Replacement Water Assessment. He notes that Phelan has been pumping

¹ The written comments by Aleshire & Wynder LLP were on the *Administrative Draft* report rather than the *Draft* report. Nonetheless, both versions contained the same information on Phelan Piñon Hills CSD.

its Antelope Valley well (Well 14) under the assumption that a Replacement Water Obligation was not applicable. Todd Groundwater noted Phelan's concerns in the Final 2016 Annual Report.

Mr. Bartz, a Board member of Phelan, and legal counsel (via teleconference) attended the August 16, 2017 Advisory Committee meeting. Mr. Bartz addressed the committee, providing additional details and the opportunity to answer questions. He reiterated many of the points in the memorandum.

The purpose of this memorandum is to summarize relevant portions of the Judgment and other information to support discussion by the Advisory Committee and determination of the Watermaster Board regarding Replacement Water Obligations, if any, for Phelan's 2016 and 2017 production. It is recognized that this may require a legal determination.

RELEVANT PORTIONS OF THE JUDGMENT

The Phelan service area is located in San Bernardino County, along the southeastern boundary of the Antelope Valley Adjudication Area but outside of the adjudicated area. As noted in the Judgment, Phelan owns land with one well (i.e., Well 14) inside of the Adjudication Area and has a right to pump groundwater from that well under the terms of the Court-approved Physical Solution of the Final Judgment. The Physical Solution allows Phelan CSD² to export groundwater from the Adjudication Area for delivery to its service area outside of the adjudication boundary, subject to the following conditions (§6.4.1.2):

- pumping does not exceed 1,200 AFY,
- pumping does not cause Material Injury,
- Phelan pays a Replacement Water Assessment pursuant to Paragraph 9.2,
- Phelan pays any other costs deemed necessary to protect Production Rights decreed in the Judgment.

The Court's Statement of Decision (§V) provides a discussion of Phelan's water rights. In that discussion, the Statement of Decision finds "Phelan Piñon Hills does not have water rights to pump groundwater and export it from the Adjudication Area or to an area of use other than on its property where Well 14 is located with the Adjudication area."

Paragraph 9.2 of the Judgment notes that Replacement Water Assessments are used "to ensure that each Party may fully exercise its Production Right." The Judgment summarizes the Replacement Water Assessment as follows:

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

² Also allows export by Boron CSD.

sum of such Producer's Production Right and Imported Water Return Flow available in that Year... (§9.2).

The Judgment continues with a discussion of certain exemptions and conditions regarding the Federal water right. It also notes that Replacement Water Assessments do not apply to "Stored Water, In-Lieu Production or Production of Imported Water Return Flows" (§9.2). Phelan is not mentioned specifically in this paragraph of the Judgment.

Paragraph 9.2 above mentions an exemption to a Replacement Water Assessment during the Rampdown period pursuant to the Drought Program, as documented in Paragraph 8.4 of the Judgment. Paragraph 8.4 provides details for implementation of a drought water management program only during the Rampdown period that affects operations and Replacement Water Assessments of the participating Public Water Suppliers. As stated in Paragraph 8.4.2, the Drought Program Participants each agree that, in order to minimize the amount of excess groundwater production in the Basin, they will use all water made available by AVEK at no more than the current AVEK treated water rate in any Year in which they produce groundwater in excess of their respective rights under the Judgment. The exemption from a Replacement Water Assessment allowed to the Drought Program participants is further explained in Paragraph 8.4.3.

An exemption from the Replacement Water Assessment in 2016 and 2017 is provided as the first sentence in Paragraph 8.3, which is titled "Reduction of Production During Rampdown" and states, as follows:

During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each Party may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments from its Pre-Rampdown Production to its Production Right. (emphasis added, §8.3).

Because no reference is made to the Drought Program Participants in Paragraph 8.3, it appears that the exemption from a Replacement Water Assessment in Paragraph 8.3 is not related to the Drought Program exemption referred to in Paragraph 8.4.

Given that Phelan's production is not subject to rampdown and is not part of the Native Safe Yield as defined in the Judgment, it was not obvious to Todd Groundwater that the exemption to a Replacement Water Assessment as documented in Paragraph 8.3 in the Judgment was applicable to Phelan. However, as emphasized in Ms. Ailin's letter, the first sentence is clear that no Producer will be subject to a Replacement Water Assessment during the first two years of the Judgment (i.e., 2016 and 2017) (see Attachment 1).

According to the Judgment, *Producer* is defined simply as "a Party who Produces Groundwater." Given this definition, it seems reasonable to conclude that Phelan is a *Producer* and, therefore, may be exempt from the Replacement Water Assessment for 2016 and 2017.

PHELAN COMMENTS AT PUBLIC HEARING AND ADVISORY COMMITTEE MEETING

Phelan General Manager, Don Bartz, provided comments on this issue at the Watermaster Board meeting on July 26, 2017. Mr. Bartz stated that Phelan has been pumping groundwater from its Well 14 based on the assumption that it was eligible for a two-year exemption from Replacement Water Assessments. Mr. Bartz noted that Phelan would have operated its wells differently if it had thought that the production was subject to a Replacement Water Assessment. Further, he noted that the costs for Replacement Water have not yet been determined; he objected to the application of yet-to-be-determined costs retroactively, given that Phelan reasonably assumed that it was exempt from such costs.

Mr. Bartz and a member of the Phelan Board of Directors attended the meeting of the Advisory Committee on August 16, 2017; legal counsel for Phelan attended via teleconference. At the meeting, Mr. Bartz reiterated many of the points summarized herein. He also wanted to assure the committee that Phelan was working hard in these first two years of the Rampdown Period to move all of its production into its service area outside of the Antelope Valley Adjudication Area. Mr. Bartz explained that it had been managing its wellfield and installing new infrastructure to mitigate water quality issues (e.g., chromium). Over the last two years, Phelan has decreased production in Well 14 significantly, and anticipates using Well 14 primarily for fire protection only in the future. Mr. Bartz answered questions from the committee and emphasized that they are working hard to move production out of the Adjudication Area; they believed that they had a two-year window free of a Replacement Water Obligation to do so. Phelan realizes that a legal determination may be required to resolve this issue.

WATER ACCOUNTING RECORDS

Once the applicability of the Replacement Water Assessment has been determined as it relates to Phelan, Todd Groundwater will adjust its water accounting database accordingly. Todd Groundwater will work with Administrative staff on proper invoicing or adjustments to Phelan's account, as applicable. These records will be included in the 2017 Annual Report. Phelan is requested to continue reporting production from Well 14 to the Antelope Valley Watermaster.

Attachment 1: Letter to Phyllis Stanin, Todd Groundwater, from June Ailin, Aleshire & Wynder, LLP, Re: Administrative Draft of Antelope Valley Watermaster 2016 Annual Report – References to Phelan Piñon Hills Community Services District, July 19, 2017.



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ORANGE COUNTY | LOS ANGELES | RIVERSIDE | CENTRAL VALLEY

AWATTORNEYS.COM

July 19, 2017

VIA E-MAIL AND U.S. MAIL

Phyllis Stanin
Vice President, Principal Geologist
Todd Groundwater
2490 Mariner Square Loop, Suite 215
Alameda, CA 94501-1080

Re: Administrative Draft of Antelope Valley Watermaster 2016 Annual Report –
References to Phelan Piñon Hills Community Services District

Dear Ms. Stanin:

This office serves as legal counsel to Phelan Piñon Hills Community Services District (“Phelan”) in connection with the Antelope Valley Groundwater Adjudication. We have reviewed the Administrative Draft of the Antelope Valley Watermaster 2016 Annual Report (“Administrative Draft”). The purpose of this letter is to address inaccurate references to Phelan in the Administrative Draft with respect to Replacement Water Assessments.

Section 1.3.2 and Section 3.3.2 of the Administrative Draft both state that Phelan “is not a Producer and does not have Production Rights.” In addition, Section 3.3.2 notes that Producers do not have to pay Replacement Water Assessments for 2016 and 2017, but goes on to suggest that Phelan will be obligated to pay Replacement Water Assessments for those years.

In fact, Phelan is a “Producer” as that term is defined in Section 3.5.30 of the Judgment and Physical Solution (“Judgment”). A “Producer” is “a Party who Produces Groundwater.” The term “Producer” is not limited in that definition or elsewhere in the Judgment to parties that have “Production Rights” as defined in Section 3.5.32 of the Judgment. The defined terms in the definition of “Producer” are similarly broadly defined and Phelan is within the scope of each of those terms.

Section 8.3 of the Judgment states: “During the first two Years of the Rampdown Period **no Producer** will be subject to a Replacement Water Assessments.” This emphatic language is not modified in any way. The deferral of Replacement Water Assessments is not limited to Producers who have Production Rights; it is applicable to all Producers.

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050

Phyllis Stanin
July 19, 2017
Page 2

Accordingly, the final Watermaster 2016 Annual Report, should contain no references to Phelan in Sections 1.3.2 and 3.3.2, and Appendix J, which purports to identify Replacement Water Obligations, should be deleted in its entirety. Phelan is not subject to any different treatment at this time from any other Producer and should not be inaccurately singled out in the 2016 Annual Report.

Very truly yours,

ALESHIRE & WYNDER, LLP



June S. Ailin
Partner

JSA

cc: Antelope Valley Watermaster (via overnight)
c/o Antelope Valley-East Kern Water Agency
6500 West Avenue N
Palmdale, CA 93551

01133-0012/393745 1

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Judy C. Carter,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On March 20, 2018, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S NOTICE OF MOTION AND MOTION FOR DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND WATERMASTER RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016 AND 2017; DECLARATION OF JUNE S. AILIN IN SUPPORT THEREOF** on the interested parties in this action as follows:

BY ELECTRONIC SERVICE: By posting the document(s) listed above to the Antelope Valley WaterMaster website in regard to Antelope Valley Groundwater matter with e-service to all parties listed on the websites Service List. Electronic service and electronic posting completed through www.avwatermaster.org via Glotrans.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to Craig Andrews Parton listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.


Craig Andrews Parton
Price Postel & Parma
200 E. Carrillo St., Suite 400
Santa Barbara, CA 93101
Tel: (805) 962-0011
(805) 965-3978

Attorney for Watermaster Board for the Antelope Valley Groundwater Adjudication

VIA OVERNIGHT MAIL

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

Executed on March 20, 2018, at El Segundo, California.


Judy C. Carter

TAB 2

1 CRAIG A. PARTON, State Bar No. 132759
2 PRICE, POSTEL & PARMA LLP
3 200 East Carrillo Street, Fourth Floor
4 Santa Barbara, California 93101
Telephone: (805) 962-0011
Facsimile: (805) 965-3978

5 Attorneys for
6 Antelope Valley Watermaster

Exempt from Filing Fees
Government Code § 6103

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 04 2018

Sherri R. Carter, Executive Officer/Clerk
By: Maricela Gonzalez, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

11 Coordination Proceeding,
12 Special Title (Rule 1550(b))

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

Judicial Council Coordination
Proceeding No. 4408

LASC Case No.: BC 325201

Assigned to the Hon. Jack Komar, Judge of the
Santa Clara Superior Court

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

16 WATERMASTER'S OPPOSITION TO
17 PHELAN PIÑON HILLS COMMUNITY
18 SERVICES DISTRICT'S MOTION FOR
19 DECLARATORY RELIEF RE
20 JUDGMENT ENTERED DECEMBER 23,
21 2015 AND WATERMASTER
22 RESOLUTION NO. R-18-04 REGARDING
23 REPLACEMENT WATER
24 ASSESSMENTS FOR 2016 AND 2017;
25 DECLARATION OF CRAIG A. PARTON;
26 EXHIBITS A-C

27 Date: April 18, 2018
28 Time: 9:00 a.m.
Dept: 222

By Fax

25 The Antelope Valley Watermaster provides this opposition to Phelan Piñon Hills
26 Community Services District's Motion for Declaratory Relief as follows:

27 ///

28 ///

1 **I. INTRODUCTON**

2 Phelan Piñon Hills Community Services District's ("Phelan") motion requesting that it be
3 found to be exempt from paying Replacement Water Assessments in either 2016 or 2017 neglects
4 to mention that this Court found, after a trial on the merits, the following with respect to Phelan:

- 5 • That Phelan has no water rights whatsoever – neither overlying rights,
6 appropriative rights, prescriptive rights, imported water rights, nor rights to
7 imported water return flows, or any other right to groundwater in the Antelope
8 Valley Basin.
- 9 • That the Phelan service area is entirely outside the Antelope Valley Basin's
10 adjudicated boundaries.
- 11 • That Phelan has no right to pump groundwater in the Adjudication Area of the
12 Antelope Valley and then export all of that production to its service area outside of
13 the Adjudication Area, thus Phelan's pumping "deprives the Basin of natural
14 recharge that would otherwise flow into the Basin by taking water from the
15 Adjudication Area for use within the Mojave Adjudication Area."
- 16 • That the "[Antelope Valley] Basin has been in a state of overdraft with no surplus
17 water available for pumping for the entire duration of Phelan's pumping (since at
18 least 2005)."
- 19 • That as a result of these findings of fact, this Court carved out a specifically
20 conditioned right to pump groundwater in the Antelope Valley Basin for Phelan
21 that was not part of the Native Safe Yield, had a quantified limit, and had an
22 accompanying and unqualified duty to pay replacement water assessments for that
23 production that was entirely exported outside of the Basin's jurisdictional
24 boundaries.

25 It is unremarkable that Phelan is required to pay that replacement water assessment for
26 water exported out of the Antelope Valley Basin in 2016 and 2017. This conclusion is supported
27 by the clear language of the Judgment and Physical Solution as well as by this Court's February
28 5, 2018 order which in no way suggests that this Court modified or changed its opinion about

Phelan's specifically conditioned right to pump groundwater pursuant to the Judgment. To find otherwise would be to allow Phelan to engage in conduct that demonstrably damages the health of the Basin and ignores the specific language applicable to Phelan's exercising of its right to pump groundwater as found in the Judgment.

II. FACTUAL BACKGROUND

Phelan's obligation to pay a Replacement Water Assessment for its production in 2016 and 2017 is clearly set forth in both this Court's Statement of Decision and in this Court's Judgment and Physical Solution ("Judgment"—attached as Exhibit A)¹.

This Court, in its Statement of Decision dated December 23, 2015 (attached as Exhibit B) found, after a trial on the merits, the following as to Phelan:

1. That Phelan's "service area falls entirely within San Bernardino County and outside the Adjudication Area." (9:9-10.)

2. That Phelan "has one well (Well 14) within the Adjudication Area and several wells outside the Adjudication Area." (9:10-11.)

3. That Phelan "uses that well water to provide public water supply to Phelan customers outside the Adjudication Area and within the adjacent Mojave Adjudication Area." (9:11-12.)

4. That this Court found in a previous Partial Statement of Decision for Trial Related to Phelan that Phelan "does not have water rights to pump groundwater and export it from the Adjudication Area or to an area for use other than on its property where Well 14 is located within the adjudication area (sic)." (9:12-16.)

5. That Phelan "owns land in the Adjudication Area but the water pumped from the well is provided to customers outside of the Adjudication Area." (9:17-18.)

6. That the Basin "has been in a state of overdraft with no surplus water available for pumping for the entire duration of Phelan's pumping (i.e., since at least 2005)." (9:18-20.)

7. That "the entire Basin, including the Butte sub-basin where Phelan pumps, is

¹ True and correct copies of the Judgment and the Statement of Decision, both dated December 23, 2015, are attached hereto as Exhibits A and B (see Declaration of Craig A. Parton).

1 hydrologically connected as a single aquifer.” (9:20-21.)

2 8. That Phelan’s “pumping of groundwater from the Basin negatively impacts the
3 Butte sub-basin” and “deprives the Basin of natural recharge that would otherwise flow into the
4 Basin by taking water from the Adjudication Area for use within the Mojave Adjudication Area.”
5 (9:22-25.); and

6 9. That Phelan has no appropriative or prescriptive rights “or any other right to Basin
7 groundwater,” that Phelan “does not have return flow rights to groundwater in the Basin because
8 any right to return flow is limited to return flows from imported water and Phelan has never
9 imported water to the Basin.” (9:7-8, 26-28.)

10 This Court went on to conclude that Phelan has “no right to pump groundwater from the
11 Basin except under the terms of the Court-approved Physical Solution herein” (10:9-10), but that
12 the Physical Solution permits Phelan to “pump up to 1,200 AFY from the Basin and deliver the
13 pumped water outside of the Basin for use in the Phelan service area if that amount of water is
14 available without causing material injury **and provided that Phelan pays a replacement water**
15 **assessment**” (24:14-17—*emphasis added*)(citing to Section 6.4.1.2 of the Judgment).

16 **III. LEGAL ANALYSIS**

17 **A. PHELAN HAS NO PRODUCTION RIGHT OR PRE-RAMPDOWN**
18 **PRODUCTION RIGHT UNDER THE JUDGMENT.**

19 As noted, Phelan produces groundwater from within the Adjudication Area and exports all
20 of it for use within its service area outside the Adjudication Area. The Judgment otherwise
21 prohibits exportation or transportation of Groundwater out of the Basin (Section 6.4). The Court
22 found that Phelan had no prescriptive, appropriative or any other groundwater rights in the Basin.

23 Phelan contends that the Rampdown provisions found in Section 8 of the Judgment are clear
24 that Phelan is not subject to a Replacement Water Assessment for its Production in 2016 and 2017.
25 In particular, Phelan refers to Section 8.3 of the Judgment that reads as follows: “During the first
26 two Years of the Rampdown Period no Producer will be subject to a Replacement Water
27 Assessment.” Phelan goes on to argue that it is encompassed by the use of the term “Producer”
28

(Section 3.5.30) and is therefore not subject to a Replacement Water Assessment pursuant to Section 8.3 of the Judgment for its Production in 2016 and 2017.

First, it is noted that Phelan's right to pump Groundwater under the Physical Solution is defined and expressly limited to the Production identified in Section 6.4.1.2. In short, Phelan has no additional rights (including any Rampdown rights described under Section 8 of the Judgment). Section 8.3 of the Judgment simply does not apply to Phelan as it has no Pre-Rampdown Production right or Production Right identified anywhere in the Judgment.² Section 8.3 of the Judgment specifically applies to "the amount that each Party may Produce from the Native Safe Yield." Phelan's right to pump groundwater, however, is not a part of the Native Safe Yield. All the Statement of Decision and the Judgment recognize is that Phelan may Produce and export a certain amount of Groundwater from the Basin **if** certain conditions are met. Because it has no Production Right in the Native Safe Yield, but instead only a right to export groundwater pursuant to the specific conditions noted in the Judgment, Phelan has no transfer or carry over rights under the Judgment. (Sections 15.1-16.1.)

Second, the Judgment specifically refers to Phelan and to its right to produce groundwater in particular as follows: "Phelan Piñon Hills Community Services District ('Phelan') **has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution**" (see Judgment, para. 3(f)—*emphasis added*). Phelan has not identified any specific provision in the Judgment that explicitly grants it the right to produce groundwater that it exports or transports out of the Basin and which is not subject to a Replacement Water Assessment for Production in 2016 and 2017.

Phelan is only mentioned one other time in the Judgment. Section 6.4.1.2 of the Judgment reads as follows: "The injunction does not apply to any Groundwater Produced within the Basin by Phelan Piñon Hills Community Services District and delivered to its service areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is available for Production without causing Material Injury, **and the District pays a Replacement Water Assessment**

² Phelan is not identified on either Exhibit 3 or Exhibit 4 of the Judgment and has never argued that it has a "Pre-Rampdown Production right."

1 pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect Production
2 Rights decreed herein, **on all water Produced and exported in this manner.**” (See Judgment,
3 Section 6.4.1.2—*emphasis added.*)

4 Phelan in essence is arguing that its “right to Produce” is the same as a “Production Right”
5 (Section 3.5.32) under the Judgment and allows them to produce up to 1,200 acre feet a Year
6 without paying for any Replacement Water in 2016 or 2017 (Section 3.5.40). This is incorrect for
7 at least two reasons:

8 First, a “Production Right” is “the amount of Native Safe Yield that may be Produced each
9 Year free of any Replacement Water Assessment and Replacement Obligation.” (Section 3.5.32.)
10 Phelan’s exportation and transportation of groundwater *from* the Adjudication Area to service areas
11 *outside* the Adjudication Area, however, is **not** production within the Native Safe Yield and is,
12 therefore, explicitly made subject to payment of a Replacement Water Assessment.

13 Second, Phelan’s right to produce groundwater is specifically delineated in the Judgment
14 where a limited right to export or transport water to its service area outside the Basin is granted and
15 Phelan is explicitly found to have no other groundwater rights under the Judgment (thus no need in
16 the Judgment to give consideration to any water right “priority” Phelan might have and which the
17 Court would have to consider under Section 3.4 of the Judgment when fashioning the Physical
18 Solution). With that sole conditional right comes a corresponding duty to pay a Replacement Water
19 Assessment for that exportation that otherwise clearly depletes the Native Safe Yield of the Basin
20 without a corresponding obligation to pay for imported water on an “acre foot out/acre foot in”
21 basis.

22 **B. PHELAN’S REQUEST HARMS THE BASIN AND IS INCONSISTENT**
23 **WITH THE SPECIFIC LANGUAGE OF THE JUDGMENT AND WITH**
24 **THIS COURT’S FEBRUARY 5TH ORDER AFTER HEARING.**

25 It is clear that the Phelan’s right to Produce Groundwater from the Basin is specifically
26 conditioned on the payment of a Replacement Water Assessment on all of its Production. Failure to
27 pay those assessments results in Phelan having no rights to Produce Groundwater under the
28 Judgment. Put another way, to find that Phelan has no duty to pay Replacement Water Assessments

1 for its Production in 2016 and 2017 is to allow Production that unquestionably contributes to
2 Overdraft that may result in “Material Injury” (Section 3.5.18-3.5.18.1) to the Native Safe Yield by
3 permitting **all** of Phelan’s Production to be exported outside the Adjudication Area while
4 simultaneously allowing it to avoid any duty to pay for imported supplies or Replacement Water to
5 offset that harm to the Native Safe Yield. Such a result is inconsistent with the explicit purposes of
6 the Physical Solution, which is to bring the Basin into balance by requiring production to be within
7 the Native Safe Yield (Sections 3.4 and 7.4).

8 In addition, the law requires that when a provision of the Judgment (e.g., Section 6.4.1.2)
9 that specifically identifies Phelan’s rights and duties may *at least in theory* be inconsistent with a
10 general provision (e.g., Section 8.3) that makes no mention of Phelan, the specific provision
11 controls. This is consistent with the contractual principles of interpretation found in the Code of
12 Civil Procedure and in the common law. (See *Prouty v. Gores Technology Group* (2004) 121
13 Cal.App.4th 1225, 1235; see also Code of Civil Procedure section 1859 – the particular intent will
14 control over a general intent that is inconsistent with it, and specific provisions are paramount over
15 general provisions when the two are arguably inconsistent; Civil Code 3534—“Particular
16 expressions qualify those which are general.”).

17 Finally, this Court’s February 5, 2018 order (attached as Exhibit C) resulting from the
18 Public Water Suppliers’ motion³ requesting an interpretation of Section 8.3 of the Judgment that
19 those Parties have Pre-Rampdown Production rights, explicitly references the Pre-Rampdown
20 Production rights of the Public Water Suppliers (Exhibit 3), the overlying landowner Parties
21 (Exhibit 4), and the rights of certain “supporting but non-stipulating” Parties (i.e., Clan Keith and
22 seven other Parties specifically identified in the Judgment) who clearly have Production Rights
23 under the Judgment. (Exhibit C, at 6:20-25; 7:14-21.) In contrast, Phelan is not listed on Exhibit 3
24 or on Exhibit 4 and has no Production Rights like Clan Keith and the other similarly situated
25 supporting but non-stipulating Parties. In addition, the expert testimony relied upon by this Court to
26

27 ³ A motion not joined by Phelan nor did Phelan file any supporting papers, nor did Phelan in any
28 way request this Court to rule that Phelan in fact actually has a Production Right as defined in the
Judgment and therefore is entitled to the benefits of Section 8.3 even though it is not listed on
Exhibit 3 or 4 nor is it a “supporting but non-stipulating” Party.

1 find that the Rampdown Period would not ultimately harm the Basin was a methodology that
2 specifically references the pumping of those listed on Exhibits 3 and 4. (Exhibit C, at 6:20-25.).
3 There is no indication from this Court's February 5th order (or from the record as developed to
4 date) that the expert analyzed or considered in any way that Phelan would actually not be paying
5 any Replacement Water Assessment for its exportation activities in 2016 or 2017.

6 As for Phelan's argument that this Court's February 5th order suggests that "all water
7 producers" from the Basin benefit from the provisions of Section 8.3 and that Phelan is a "water
8 producer," this Court was careful in its order to clarify the Parties included in this phrase: "That
9 clearly places *all water producers, both Exhibit 3 and Exhibit 4 parties, and supporting but*
10 **non-stipulating parties** who are bound by the judgment, within the provisions of 8.3" (Exhibit C,
11 at 7:25-27—*emphasis added*.) Phelan is neither listed on Exhibit 3, nor on Exhibit 4, nor is it a
12 supporting but non-stipulating landowner like Clan Keith and the other seven Parties specifically
13 identified with Clan Keith in the Judgment (Judgment, Exhibit A, at 2:5-17.)

14 **IV. CONCLUSION**

15 Despite finding that Phelan had no overlying, appropriate, prescriptive or other groundwater
16 rights, the Judgment and Physical Solution fashioned a unique benefit for Phelan to export up to
17 1,200 AFY of groundwater from the Adjudication Area for delivery to its service area outside of the
18 Adjudication Area. This right, however, was specifically and carefully conditioned on this exported
19 groundwater causing no Material Injury and the District paying a Replacement Water Assessment
20 pursuant to Paragraph 9.2.

21 Therefore, the result required by the Judgment and by this Court's consistent order of
22 February 5, 2018 is clear: Phelan must pay a Replacement Water Assessment on its production in
23 2016 and 2017 for its production that is entirely exported out of the Adjudication Area.

24 Dated: April 4, 2018

PRICE, POSTEL & PARMA LLP

26 By: Craig A. Parton
27 CRAIG A. PARTON
28 Attorneys for
Antelope Valley Watermaster

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1. I am General Counsel to the Antelope Valley Watermaster and am authorized by unanimous vote of the Board of Directors of the Antelope Valley Watermaster to file this opposition, having been so directed by the Board to do so as their regular Board meeting on March 28, 2018.

3. A true and correct copy of the Statement of Decision dated December 23, 2015 in this case is attached hereto as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of April, 2018 in Santa Barbara, California.

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Exhibit A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Actions:
Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
BC 325201;

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

~~(PROPOSED)~~ JUDGMENT

PROPOSED JUDGMENT

1 The matter came on for trial in multiple phases. A large number of parties representing
2 the majority of groundwater production in the Antelope Valley Area of Adjudication ("Basin")
3 entered into a written stipulation to resolve their claims and requested that the Court enter their
4 [Proposed] Judgment and Physical Solution as part of the final judgment. As to all remaining
5 parties, including those who failed to answer or otherwise appear, the Court heard the testimony
6 of witnesses, considered the evidence, and heard the arguments of counsel. Good cause
7 appearing, the Court finds and orders judgment as follows:

- 8 1. The Second Amended Stipulation For Entry of Judgment and Physical Solution
9 among the stated stipulating parties is accepted and approved by the Court.
- 10 2. Consistent with the December 23 2015 Statement of Decision ("Decision"), the
11 Court adopts the Proposed Judgment and Physical Solution attached hereto as
12 Exhibit A and incorporated herein by reference, as the Court's own physical
13 solution ("Physical Solution"). The Physical Solution is binding upon all parties.
- 14 3. In addition to the terms and provisions of the Physical Solution the Court finds as
15 follows:

- 16 a. Each of the Stipulating Parties to the Physical Solution has the right to
17 pump groundwater from the Antelope Valley Adjudication Area as stated
18 in the Decision and Physical Solution.
- 19 b. The following entities are awarded prescriptive rights from the native safe
20 yield against the Tapia Parties, defaulted parties identified in Exhibit 1 to
21 the Physical Solution, and parties who did not appear at trial identified in
22 Exhibit B attached hereto, in the following amounts:

23 Los Angeles County Waterworks District No. 40	17,659.07 AFY
24 Palmdale Water District	8,297.91 AFY
25 Littlerock Creek Irrigation District	1,760 AFY
26 Quartz Hill Water District	1,413 AFY
27 Rosamond Community Services District	1,461.7 AFY
28 Palm Ranch Irrigation District	960 AFY

- 1 -

PROPOSED JUDGMENT

1 Desert Lake Community Services District 318 AFY
2 California Water Service Company 655 AFY
3 North Edwards Water District 111.67 AFY
4 No other parties are subject to these prescriptive rights.
5 c. Each of the parties referred to in the Decision as Supporting Landowner
6 Parties has the right to pump groundwater from the Antelope Valley
7 Adjudication Area as stated in the Decision and in Paragraph 5.1.10 of the
8 Physical Solution in the following amounts:
9 i. Desert Breeze MHP, LLC 18.1 AFY
10 ii. Milana VII, LLC dba Rosamond Mobile Home Park 21.7 AFY
11 iii. Reesdale Mutual Water Company 23 AFY
12 iv. Juanita Eyherabide, Eyherabide Land Co., LLC
13 and Eyherabide Sheep Company, collectively 12 AFY
14 v. Clan Keith Real Estate Investments, LLC.,
15 dba Leisure Lake Mobile Estates 64 AFY
16 vi. White Fence Farms Mutual Water Co. No. 3 4 AFY
17 vii. LV Ritter Ranch LLC 0 AFY
18 viii. *Robert Enterprises, Inc., Hi-Grade Materials Co., and CTR, a*
d. Each member of the Small Pumper Class can exercise an overlying right
19 pursuant to the Physical Solution. The Judgment Approving Small Pumper
20 Class Action Settlements is attached as Exhibit C ("Small Pumper Class
21 Judgment") and is incorporated herein by reference.
22 e. Cross-defendant Charles Tapia, as an individual and as Trustee of Nellie
23 Tapia Family Trust (collectively, "The Tapia Parties") has no right to pump
24 groundwater from the Antelope Valley Adjudication Area except under the
25 terms of the Physical Solution.
26 f. Phelan Piñon Hills Community Services District ("Phelan") has no right to
27 pump groundwater from the Antelope Valley Adjudication Area except
28 under the terms of the Physical Solution.

General Partnership - 200 AFY

1 g. The Willis Class members have an overlying right that is to be exercised in
2 accordance with the Physical Solution.

3 h. All defendants or cross-defendants who failed to appear in any of these
4 coordinated and consolidated cases are bound by the Physical Solution and
5 their overlying rights, if any, are subject to the prescriptive rights of the
6 Public Water Suppliers. A list of the parties who failed to appear is
7 attached hereto as Exhibit D.

8 i. ~~Robar Enterprises, Inc., Hi-Grade Materials Co., and CJR, a general~~
9 ~~partnership (collectively, "Robar") are~~
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14 4. Each party shall designate the name, address and email address, to be used for all
15 subsequent notices and service of process by a designation to be filed within thirty
16 days after entry of this Judgment. The list attached as Exhibit A to the Small
17 Pumper Class Judgment shall be used for notice purposes initially, until updated
18 by the Class members and/or Watermaster. The designation may be changed from
19 time to time by filing a written notice with the Court. Any party desiring to be
20 relieved of receiving notice may file a waiver of notice to be approved by the
21 Court. The Court will maintain a list of parties and their respective addresses to
22 whom notice or service of process is to be sent. If no designation is made as
23 required herein, a party's designee shall be deemed to be the attorney of record or,
24 in the absence of an attorney of record, the party at its specified address.

25 5. All real property owned by the parties within the Basin is subject to this Judgment.
26 It is binding upon all parties, their officers, agents, employees, successors and
27 assigns. Any party, or executor of a deceased party, who transfers real property
28 that is subject to this Judgment shall notify any transferee thereof of this Judgment.

- 3 -

PROPOSED JUDGMENT

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This Judgment shall not bind the parties that cease to own real property within the Basin, and cease to use groundwater, except to the extent required by the terms of an instrument, contract, or other agreement.

The Clerk shall enter this Judgment.

Dated: Dec 23, 2015



JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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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**

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INDEX OF EXHIBITS AND APPENDICES

Exhibits:

- Exhibit 1: Listing of Parties Against Which a Default Judgment Has Been Entered.
- Exhibit 2: Map of Area Adjudicated in This Action.
- Exhibit 3: Non-Overlying Production Rights.
- Exhibit 4: Overlying Production Rights
- Exhibit 5: Phase 3 Trial Decision.
- Exhibit 6: Map of boundaries of Edwards Air Force Base.
- Exhibit 7: Map of boundaries of Air Force Plant 42.
- Exhibit 8: Rights to Produce Imported Water Return Flows.
- Exhibit 9: Map of the Watershed of the Basin.
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Appendices:

- Appendix A: Non-Pumper Class Judgment.
- Appendix B: Non-Pumper Class Stipulation of Settlement.

1 A number of Parties have agreed and stipulated to entry of a Judgment consistent with the
2 terms of this Judgment and Physical Solution (hereafter "this Judgment"). The stipulations of the
3 Parties are conditioned upon further proceedings that will result in a Judgment binding all Parties
4 to the Action. The Court, having considered the pleadings, the stipulations of the Parties, and the
5 evidence presented, and being fully informed in the matter, approves the Physical Solution¹
6 contained herein. This Judgment is entered as a Judgment binding on all Parties served or
7 appearing in this Action, including without limitation, those Parties which have stipulated to this
8 Judgment, are subject to prior settlement(s) and judgment(s) of this Court, have defaulted or
9 hereafter stipulate to this Judgment.

10 **I. DESCRIPTION OF LITIGATION**

11 **1. PROCEDURAL HISTORY**

12 **1.1 Initiation of Litigation.**

13 On October 29, 1999, Diamond Farming Company ("Diamond Farming") filed in
14 the Riverside County Superior Court (Case No. RIC 344436) the first complaint in what would
15 become these consolidated complex proceedings known as the Antelope Valley Groundwater
16 Cases. Diamond Farming's complaint names as defendants the City of Lancaster, Palmdale
17 Water District, Antelope Valley Water Company, Palm Ranch Irrigation District, Quartz Hill
18 Water District, Rosamond Community Services District, and Mojave Public Utility District.

19 On February 22, 2000, Diamond Farming filed another complaint in the Riverside
20 County Superior Court (Case No. RIC 344468). The two Diamond Farming actions were
21 subsequently consolidated.

22 On January 25, 2001, Wm. Bolthouse Farms, Inc. ("Bolthouse") filed a complaint
23 in the same Court against the same entities, as well as Littlerock Creek Irrigation District and Los
24 Angeles Waterworks Districts Nos. 37 and 40 (Case No. RIC 353840).

25 ¹ A "physical solution" describes an agreed upon or judicially imposed resolution of conflicting claims in a manner
26 that advances the constitutional rule of reasonable and beneficial use of the state's water supply. (*City of Santa Maria*
27 *v. Adam* (2012) 211 Cal. App. 4th 266, 288.) It is defined as "an equitable remedy designed to alleviate overdrafts
28 and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to
prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource."
(*California American Water v. City of Seaside* (2010) 183 Cal. App. 4th 471, 480.)

1 The Diamond Farming and Bolthouse complaints variously allege that unregulated
2 pumping by these named public agencies (collectively the Public Water Suppliers) has irreparably
3 harmed Diamond Farming and Bolthouse's rights to produce Groundwater from the Antelope
4 Valley Groundwater Basin, and interfered with their rights to put that Groundwater to reasonable
5 and beneficial uses on property they own or lease. Diamond Farming and Bolthouse's complaints
6 seek a determination of their water rights and to quiet title as to the same.

7 In 2001, the Diamond Farming and Bolthouse actions were consolidated in the
8 Riverside County Superior Court.

9 In August 2002, a Phase 1 trial commenced in the Riverside County Superior
10 Court in the consolidated Diamond Farming/Bolthouse proceedings for the purpose of
11 determining the geographic boundary of the area to be adjudicated. That Phase 1 trial was not
12 concluded and the Court did not determine any issues or make any factual findings at that time.

13 **1.2 General Adjudication Commenced.**

14 In 2004, Los Angeles County Waterworks District No. 40 ("District No. 40")
15 initiated a general Groundwater adjudication for the Antelope Valley Ground Water Basin by
16 filing identical complaints for declaratory and injunctive relief in the Los Angeles and Kern
17 County Superior Courts (Los Angeles County Superior Court Case No. BC 325201 and Kern
18 County Superior Court Case No. S-1500-CV 254348). District No. 40's complaints sought a
19 judicial determination of the respective rights of the Parties to produce Groundwater from the
20 Antelope Valley Groundwater Basin.

21 On December 30, 2004, District No. 40 petitioned the Judicial Council of
22 California for coordination of the above-referenced actions. On June 17, 2005, the Judicial
23 Council of California granted the petition and assigned the "Antelope Valley Groundwater Cases"
24 (Judicial Council Coordination Proceeding No. 4408) to this Court (Santa Clara County Superior
25 Court Case No. 1-05-CV-049053 (Hon. Jack Komar)).

26 For procedural purposes, the Court requested that District No. 40 refile its
27 complaint as a first amended cross-complaint in the now coordinated proceedings. Joined by the
28

1 other Public Water Suppliers, District No. 40 filed a first amended cross-complaint seeking
2 declaratory and injunctive relief and an adjudication of the rights to all Groundwater within the
3 Antelope Valley Groundwater Basin. The Public Water Suppliers' cross-complaint, as currently
4 amended, requests an adjudication to protect the public's water supply, prevent water quality
5 degradation, and stop land subsidence. Some of the Public Water Suppliers allege they have
6 acquired prescriptive and equitable rights to the Groundwater in the Basin. They allege the Basin
7 has been in overdraft for more than five consecutive Years and they have pumped water from the
8 Basin for reasonable and beneficial purposes in an open, notorious, and continuous manner. They
9 allege each non-public cross-defendant had actual or constructive notice of these activities,
10 sufficient to establish prescriptive rights in their favor. In order to alleviate overdraft conditions
11 and protect the Basin, the Public Water Suppliers also request a physical solution.

12 **1.3 Other Actions**

13 In response to the Public Water Suppliers first amended cross-complaint,
14 numerous Parties filed cross-complaints seeking various forms of relief.

15 On August 30, 2006, Antelope Valley-East Kern Water Agency ("AVEK") filed a
16 cross-complaint seeking declaratory and injunctive relief and claiming overlying rights and rights
17 to pump the supplemental yield attributable to return flows from State Water Project water
18 imported to the Basin.

19 On January 11, 2007, Rebecca Lee Willis filed a class action complaint in the Los
20 Angeles County Superior Court (Case No. BC 364553) for herself and on behalf of a class of
21 non-pumping overlying property owners ("Non-Pumper Class"), through which she sought
22 declaratory relief and money damages from various public entities. Following certification, the
23 Non-Pumper Class entered into a settlement agreement with the Public Water Suppliers
24 concerning the matters at issue in the class complaint. On September 22, 2011, the Court
25 approved the settlement through an amended final judgment.

26 On June 2, 2008, Richard A. Wood filed a class action complaint for himself and
27 on behalf of a class of small property owners in this action ("Small Pumper Class"), *Wood v. Los*
28

1 *Angeles Co. Waterworks Dist. 40, et al.*, (Case No.: BC 391869) through which he sought
2 declaratory relief and money damages from various public entities. The Small Pumper Class was
3 certified on September 2, 2008.

4 On February 24, 2010, following various orders of coordination, the Court granted
5 the Public Water Suppliers' motion to transfer and consolidate all complaints and cross-
6 complaints in this matter, with the exception of the complaint in Sheldon R. Blum, etc. v. Wm.
7 Bolthouse Farms, Inc. (Santa Clara County Superior Court Case No. 1-05-CV-049053), which
8 remains related and coordinated.

9 **1.4 McCarran Amendment Issues**

10 The Public Water Suppliers' cross-complaint names Edwards Air Force Base,
11 California and the United States Department of the Air Force as cross-defendants, seeking the
12 same declaratory and injunctive relief as sought against the other cross-defendants. This
13 Judgment, or any other determination in this case regarding rights to water, is contingent on a
14 Judgment satisfying the requirements of the McCarran Amendment, 43 U.S.C. §666. The United
15 States reserves all rights to object or otherwise challenge any interlocutory judgment and reserves
16 all rights to appeal a Judgment that does not satisfy the requirements of the McCarran
17 Amendment.

18 **1.5 Phased Trials**

19 The Court has divided the trial in this matter into multiple phases, four of which
20 have been tried.

21 Through the Phase 1 trial, the Court determined the geographical boundaries of the
22 area adjudicated in this Action which is defined as the Basin. On November 3, 2006, the Court
23 entered an order determining that issue.

24 Through the Phase 2 trial, the Court determined that all areas within the Basin are
25 hydrologically connected and a single aquifer, and that there is sufficient hydraulic connection
26 between the disputed areas and the rest of the Basin such that the Court must include the disputed
27 areas within the adjudication area. The Court further determined that it would be premature to make
28

1 any determinations regarding, *inter alia*, claims that portions of the Basin should be treated as a
2 separate area for management purposes. On November 6, 2008, the Court entered its Order after
3 Phase Two Trial on Hydrologic Nature of Antelope Valley.

4 Through the Phase 3 trial, the Court determined the Basin is in a current state of
5 overdraft and the safe yield is 110,000 acre-feet per Year. The Court found the preponderance of
6 the evidence presented established that setting the safe yield at 110,000 acre-feet per Year will
7 permit management of the Basin in such a way as to preserve the rights of the Parties in
8 accordance with the California Constitution and California law. On July 13, 2011, the Court filed
9 its Statement of Decision.

10 Through the Phase 4 trial, the Court determined the overall Production occurring
11 in the Basin in calendar Years 2011 and 2012.

12 **1.6 Defaults**

13 Numerous Parties have failed to respond timely, or at all, to the Public Water
14 Suppliers' cross-complaint, as amended, and their defaults have been entered. The Court has
15 given the defaulted Parties notice of this Judgment and Physical Solution, together with the
16 opportunity to be heard regarding this Judgment, and hereby enters default judgments against all
17 such Parties and incorporates those default judgments into this Judgment. Pursuant to such
18 default judgments a defaulted Party has no right to Produce Groundwater from the Basin. All
19 Parties against which a default judgment has been entered are identified on Exhibit 1, attached
20 hereto and incorporated herein by reference.

21 **2. GENERAL ADJUDICATION DOES NOT APPLY TO SURFACE WATER.**

22 Pursuant to California law, surface water use since 1914 has been governed by the Water
23 Code. This Judgment does not apply to surface water as defined in the Water Code and is not
24 intended to interfere with any State permitted or licensed surface water rights or pre-1914 surface
25 water right. The impact of any surface water diversion should be considered as part of the State
26 Water Resources Control Board permitting and licensing process and not as part of this Judgment.

1 **II. DECREE**

2 **3. JURISDICTION, PARTIES, DEFINITIONS.**

3 **3.1 Jurisdiction.** This Action is an *inter se* adjudication of all claims to the
4 rights to Produce Groundwater from the Basin alleged between and among all Parties. This Court
5 has jurisdiction over the subject matter and Parties herein to enter a Judgment declaring and
6 adjudicating the rights to reasonable and beneficial use of water by the Parties in the Action
7 pursuant to Article X, section 2 of the California Constitution.

8 **3.2 Parties.** The Court required that all Persons having or claiming any
9 right, title or interest to the Groundwater within the Basin be notified of the Action. Notice has
10 been given pursuant to the Court's order. All Public Water Suppliers, landowners, Non-Pumper
11 Class and Small Pumper Class members and other Persons having or making claims have been or
12 will be included as Parties to the Action. All named Parties who have not been dismissed have
13 appeared or have been given adequate opportunity to appear.

14 **3.3 Factual and Legal Issues.** The complaints and cross-complaints in the
15 Action frame many legal issues. The Action includes over 4,000 Parties, as well as the members
16 of the Non-Pumper Class and the members of the Small Pumper Class. The Basin's entire
17 Groundwater supply and Groundwater rights, extending over approximately 1390 square miles,
18 have been brought to issue. The numerous Groundwater rights at issue in the case include,
19 without limitation, overlying, appropriative, prescriptive, and federal reserved water rights to
20 Groundwater, rights to return flows from Imported Water, rights to recycled water, rights to
21 stored Imported Water subject to the Watermaster rules and regulations, and rights to utilize the
22 storage space within the Basin. After several months of trial, the Court made findings regarding
23 Basin characteristics and determined the Basin's Safe Yield. The Court's rulings and judgments
24 in this case, including the Safe Yield determination, form the basis for this Judgment.

25 **3.4 Need for a Declaration of Rights and Obligations for a Physical**
26 **Solution.** A Physical Solution for the Basin, based on a declaration of water rights and a formula
27 for allocation of rights and obligations, is necessary to implement the mandate of Article X,
28

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
28

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
28

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.

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

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

3.5.55 Year. Calendar year.

4. SAFE YIELD AND OVERDRAFT

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

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

5. PRODUCTION RIGHTS

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

1 **5.1.1 Overlying Production Rights.** The Parties listed in Exhibit 4,
2 attached hereto and incorporated herein by reference, have Overlying Production Rights. Exhibit
3 4 sets forth the following for each Overlying Production Right: (1) the Pre-Rampdown
4 Production; (2) the Production Right; and (3) the percentage of the Production from the Adjusted
5 Native Safe Yield.

6 **5.1.1.1** The Parties listed on Exhibit 4 have the right to Produce
7 Groundwater, on an annual basis, up to their Overlying Production Right set forth in Exhibit 4 for
8 each Party. Each Party's Overlying Production Right is subject to the following conditions and
9 limitations:

10 **5.1.1.2** Pursuant to the terms of this Judgment, the Parties listed on
11 Exhibit 4 have the right to Produce their Overlying Production Right for use on land they own or
12 lease and without the need for Watermaster approval.

13 **5.1.1.3** Overlying Production Rights may be transferred pursuant to
14 the provisions of Paragraph 16 of this Judgment.

15 **5.1.1.4** Overlying Production Rights are subject to Pro-Rata
16 Reduction or Increase only pursuant to Paragraph 18.5.10.

17 **5.1.2 Non-Pumper Class Rights.** The Non-Pumper Class members
18 claim the right to Produce Groundwater from the Native Safe Yield for reasonable and beneficial
19 uses on their overlying land as provided for in this Judgment. On September 22, 2011, the Court
20 approved the Non-Pumper Class Stipulation of Settlement through an amended final judgment
21 that settled the Non-Pumper Class' claims against the Public Water Suppliers ("Non-Pumper
22 Class Judgment"). A copy of the Non-Pumper Class Judgment and the Non-Pumper Class
23 Stipulation of Settlement are attached for reference only as Appendices A and B. This Judgment
24 is consistent with the Non-Pumper Class Stipulation of Settlement and Judgment. Future
25 Production by a member of the Non-Pumper Class is addressed in the Physical Solution.

26 **5.1.2.1** The Non-Pumper Class members shall have no right to
27 transfer water pursuant to this Judgment.

1 **5.1.3 Small Pumper Class Production Rights.** Subject only to the
2 closure of the Small Pumper Class membership, the Small Pumper Class's aggregate Production
3 Right is 3806.4 acre-feet per Year. Allocation of water to the Small Pumper Class is set at an
4 average Small Pumper Class Member amount of 1.2 acre-feet per existing household or parcel
5 based upon the 3172 known Small Pumper Class Member parcels at the time of this Judgment.
6 Any Small Pumper Class Member may Produce up to and including 3 acre-feet per Year per
7 existing household for reasonable and beneficial use on their overlying land, and such Production
8 will not be subject to Replacement Water Assessment. Production by any Small Pumper Class
9 Member above 3 acre-feet per Year per household or parcel will be subject to Replacement Water
10 Assessment, as set forth in this Judgment. Administrative Assessments for unmetered Production
11 by Small Pumper Class Members shall be set based upon the allocation of 1.2 acre-feet per Year
12 per household or parcel, whichever is the case; metered Production shall be assessed in accord
13 with the actual Production. A Small Pumper Class Member who is lawfully, by permit, operating
14 a shared well with an adjoining Small Pumper Class Member, shall have all of the same rights
15 and obligations under this Judgment without regard to the location of the shared well, and such
16 shared use is not considered a prohibited transfer of a pumping right under Paragraph 5.1.3.3.

17 **5.1.3.1** The Production of Small Pumper Class Members of up to 3
18 acre-feet per Year of Groundwater per household or per parcel for reasonable and beneficial use
19 shall only be subject to reduction if: (1) the reduction is based upon a statistically credible study
20 and analysis of the Small Pumper Class' actual Native Safe Yield Production, as well as the
21 nature of the use of such Native Safe Yield, over at least a three Year period; and (2) the
22 reduction is mandated by Court order after notice to the Small Pumper Class Members affording a
23 reasonable opportunity for the Court to hear any Small Pumper Class Member objections to such
24 reduction, including a determination that Water Code section 106 may apply so as to prevent a
25 reduction.

26 **5.1.3.2** The primary means for monitoring the Small Pumper Class
27 Members' Groundwater use under the Physical Solution will be based on physical inspection by
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1 the Watermaster, including the use of aerial photographs and satellite imagery. All Small Pumper
2 Class Members agree to permit the Watermaster to subpoena the electrical meter records
3 associated with their Groundwater wells on an annual basis. Should the Watermaster develop a
4 reasonable belief that a Small Pumper Class Member household is using in excess of 3 acre-feet
5 per Year, the Watermaster may cause to be installed a meter on such Small Pumper Class
6 Member's well at the Small Pumper Class Member's expense.

7 5.1.3.3 The pumping rights of Small Pumper Class Members are
8 not transferable separately from the parcel of property on which the water is pumped, provided
9 however a Small Pumper Class Member may move their water right to another parcel owned by
10 that Small Pumper Class Member with approval of the Court. If a Small Pumper Class Member
11 parcel is sold, absent a written contract stating otherwise and subject to the provisions of this
12 Judgment, the water right for that Small Pumper Class Member parcel shall transfer to the new
13 owners of that Small Pumper Class Member parcel. The pumping rights of Small Pumper Class
14 Members may not be aggregated for use by a purchaser of more than one Small Pumper Class
15 Member's property.

16 5.1.3.4 Defaults or default judgments entered against any Small
17 Pumper Class Member who did not opt out of the Small Pumper Class are hereby deemed non-
18 operative and vacated *nunc pro tunc*, but only with respect to their ownership of real property
19 meeting the Small Pumper Class definition.

20 5.1.3.5 The Small Pumper Class shall be permanently closed to new
21 membership upon issuance by the Court of its order granting final approval of the Small Pumper
22 Class Settlement (the "Class Closure Date"), after the provision of notice to the Class of the Class
23 Closure Date. Any Person or entity that does not meet the Small Pumper Class definition prior to
24 the Class Closure Date is not a Member of the Small Pumper Class. Similarly, any additional
25 household constructed on a Small Pumper Class Member parcel after the Class Closure Date is
26 not entitled to a Production Right as set forth in Paragraphs 5.1.3 and 5.1.3.1.

1 **5.1.3.6** Unknown Small Pumper Class Members are defined as: (1)
2 those Persons or entities that are not identified on the list of known Small Pumper Class Members
3 maintained by class counsel and supervised and controlled by the Court as of the Class Closure
4 Date; and (2) any unidentified households existing on a Small Pumper Class Member parcel prior
5 to the Class Closure Date. Within ten (10) Court days of the Class Closure Date, class counsel
6 for the Small Pumper Class shall publish to the Court website and file with the Court a list of the
7 known Small Pumper Class Members.

8 **5.1.3.7** Given the limited number of additions to the Small Pumper
9 Class during the more than five Years since the initial notice was provided to the Class, the Court
10 finds that the number of potentially unknown Small Pumper Class Members and their associated
11 water use is likely very low, and any Production by unknown Small Pumper Class Members is
12 hereby deemed to be *de minimis* in the context of this Physical Solution and shall not alter the
13 Production Rights decreed in this Judgment. However, whenever the identity of any unknown
14 Small Pumper Class Member becomes known, that Small Pumper Class Member shall be bound
15 by all provisions of this Judgment, including without limitation, the assessment obligations
16 applicable to Small Pumper Class Members.

17 **5.1.3.8** In recognition of his service as class representative, Richard
18 Wood has a Production Right of up to five 5 acre-feet per Year for reasonable and beneficial use
19 on his parcel free of Replacement Water Assessment. This Production Right shall not be
20 transferable and is otherwise subject to the provisions of this Judgment.

21 **5.1.4 Federal Reserved Water Right.** The United States has a right to
22 Produce 7,600 acre-feet per Year from the Native Safe Yield as a Federal Reserved Water Right
23 for use for military purposes at Edwards Air Force Base and Air Force Plant 42. *See Cappaert v.*
24 *United States*, 426 U.S. 128, 138 (1976); *United States v. New Mexico*, 438 U.S. 696, 700 (1978).
25 Maps of the boundaries of Edwards Air Force Base and Plant 42 are attached hereto as Exhibits 6
26 and 7. The United States may Produce any or all of this water at any time for uses consistent with
27 the purposes of its Federal Reserved Water Right. Water uses at Edwards Air Force Base and
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1 Plant 42 as of the date of this Judgment are consistent with the military purposes of the facilities.
2 The Federal Reserved Water Right to Produce 7,600 acre-feet per Year is not subject to
3 Rampdown or any reduction including Pro-Rata Reduction due to Overdraft.

4 **5.1.4.1** In the event the United States does not Produce its
5 entire 7,600 acre-feet in any given Year, the unused amount in any Year will be allocated to the
6 Non-Overlying Production Rights holders, except for Boron Community Services District and
7 West Valley County Water District, in the following Year, in proportion to Production Rights set
8 forth in Exhibit 3. This Production of unused Federal Reserved Water Right Production does not
9 increase any Non-Overlying Production Right holder's decreed Non-Overlying Production Right
10 amount or percentage, and does not affect the United States' ability to fully Produce its Federal
11 Reserved Water Right as provided in Paragraph 5.1.4 in any subsequent Year. Upon entry of a
12 judgment confirming its Federal Reserved Water Rights consistent with this Judgment, the United
13 States waives any rights under State law to a correlative share of the Groundwater in the Basin
14 underlying Edwards Air Force Base and Air Force Plant 42.

15 **5.1.4.2** The United States is not precluded from acquiring State law
16 based Production Rights in excess of its Federal Reserved Water Right through the acquisition of
17 Production Rights in the Basin.

18 **5.1.5 State of California Production Rights.** The State of California
19 shall have a Production Right of 207 acre-feet per Year from the Native Safe Yield and shall have
20 the additional right to Produce Native Safe Yield as set forth in Paragraphs 5.1.5.3 and 5.1.5.4
21 below. This Production of Native Safe Yield shall not be subject to Pro-Rata Reduction. Any
22 Production by the State of California above 207 acre-feet per Year that is not Produced pursuant
23 to Paragraphs 5.1.5.3 and 5.1.5.4 below shall be subject to Replacement Assessments. All
24 Production by the State of California shall also be subject to the Administrative Assessment and
25 the Balance Assessment except in emergency situations as provided in Paragraph 5.1.5.4.3 below.
26 Any Production of Native Safe Yield pursuant to Paragraphs 5.1.5.3 and 5.1.5.4 below shall not
27 reduce any other Party's Production Rights pursuant to this Judgment.

1 **5.1.5.1** The State of California's Production Right in the amount of
2 207 acre-feet per Year is allocated separately to each of the State agencies, departments, and
3 associations as listed below in Paragraph 5.1.5.2. Notwithstanding the separate allocations, any
4 Production Right, or portion thereof, of one of the State agencies, departments, and associations
5 may be transferred or used by the other State agencies, departments, and associations on parcels
6 within the Basin. This transfer shall be done by agreement between the State agencies,
7 departments, or associations without a Replacement Water Assessment and without the need for
8 Watermaster approval. Prior to the transfer of another State agency, department, or association's
9 Production Right, the State agency, department, or association receiving the ability to use the
10 Production Right shall obtain written consent from the transferor. Further, the State agency,
11 department, or association receiving the Production Right shall notify the Watermaster of the
12 transfer.

13 **5.1.5.2** The Production Rights are allocated as follows and may be
14 exercised by the following nine (9) State agencies:

15 **5.1.5.2.1** The California Department of Water Resources-104
16 acre- feet per Year.

17 **5.1.5.2.2** The California Department of Parks and Recreation-
18 9 acre-feet per Year.

19 **5.1.5.2.3** The California Department of Transportation -47
20 acre-feet per Year.

21 **5.1.5.2.4** The California State Lands Commission-3 acre-feet
22 per Year

23 **5.1.5.2.5** The California Department of Corrections and
24 Rehabilitation-3 acre-feet per Year.

25 **5.1.5.2.6** The 50th District Agricultural Association-32 acre-
26 feet per Year.

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1 ultimately returned to the Basin. However, DWR and AVEK shall use their best efforts to enter
2 into an agreement allowing AVEK to recapture the Native Safe Yield DWR puts into the
3 California Aqueduct and return it to the Basin.

4 **5.1.5.4.3** Department of Military. The Department of Military
5 may Produce additional Groundwater in an amount necessary to protect and promote public
6 health and safety during an event deemed to be an emergency by the Department of Military
7 pursuant to California Government Code sections 8567 and 8571, and California Military and
8 Veterans Code sections 143 and 146. Such Production shall be free from any assessment,
9 including any Administrative, Balance, or Replacement Water Assessment.

10 **5.1.5.4.4** The California Department of Veterans Affairs. The
11 California Department of Veteran Affairs has begun the expansion and increased occupancy
12 project of the Veterans Home of California – Lancaster facility owned by the State of California
13 by and on behalf of the California Department of Veterans Affairs. The California Department of
14 Veterans Affairs fully expects that it will be able to purchase up to an additional 40 acre-feet per
15 Year for use at this facility from District No. 40.

16 **5.1.6 Non-Overlying Production Rights.** The Parties listed in Exhibit 3
17 have Production Rights in the amounts listed in Exhibit 3. Exhibit 3 is attached hereto, and
18 incorporated herein by reference. Non-Overlying Production Rights are subject to Pro-Rata
19 Reduction or Increase only pursuant to Paragraph 18.5.10.

20 **5.1.7 City of Lancaster.** The City of Lancaster ("Lancaster") can
21 Produce up to 500 acre-feet of Groundwater for reasonable and beneficial uses at its National
22 Soccer Complex. Such production shall only be subject to Administrative Assessment and no
23 other assessments. Lancaster will stop Producing Groundwater and will use Recycled Water
24 supplied from District No. 40, when it becomes available, to meet the reasonable and beneficial
25 water uses of the National Soccer Complex. Lancaster may continue to Produce up to 500 acre-
26 feet of Groundwater until Recycled Water becomes available to serve the reasonable and
27 beneficial water uses of the National Soccer Complex. Nothing in this paragraph shall be
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1 construed as requiring Lancaster to have any responsibility for constructing, or in any way
2 contributing to the cost of, any infrastructure necessary to deliver Recycled Water to the National
3 Soccer Complex.

4 **5.1.8 Antelope Valley Joint Union High School District.** Antelope
5 Valley Joint Union High School District is a public school entity duly organized and existing
6 under the laws of the State of California. In addition to the amounts allocated to Antelope Valley
7 Joint Union High School District (“AVJUHS”) and pursuant to Exhibit 4, AVJUHS can
8 additionally produce up to 29 acre-feet of Groundwater for reasonable and beneficial uses on its
9 athletic fields and other public spaces. When recycled water becomes available to Quartz Hill
10 High School (located at 6040 West Avenue L, Quartz Hill, CA 93535) which is a site that is part
11 of AVJUHS, at a price equal to or less than the lowest cost of any of the following:
12 Replacement Obligation, Replacement Water, or other water that is delivered to AVJUHS at
13 Quartz Hill High School, AVJUHS will stop producing the 29 acre-feet of Groundwater
14 allocated to it and use recycled water as a replacement to its 29 acre-feet production. AVJUHS
15 retains its production rights and allocation pursuant to Exhibit 4 of this Judgment.

16 **5.1.9 Construction of Solar Power Facilities.** Any Party may Produce
17 Groundwater in excess of its Production Right allocated to it in Exhibit 4 for the purpose of
18 constructing a facility located on land overlying the Basin that will generate, distribute or store
19 solar power through and including December 31, 2016 and shall not be charged a Replacement
20 Water Assessment or incur a Replacement Obligation for such Production in excess of its
21 Production Rights. Any amount of such production in excess of the Production Right through
22 and including December 31, 2016 shall be reasonable to accomplish such construction but shall
23 not exceed 500 acre-feet per Year for all Parties using such water.

24 **5.1.10 Production Rights Claimed by Non-Stipulating Parties.** Any
25 claim to a right to Produce Groundwater from the Basin by a Non-Stipulating Party shall be
26 subject to procedural or legal objection by any Stipulating Party. Should the Court, after taking
27 evidence, rule that a Non-Stipulating Party has a Production Right, the Non-Stipulating Party

1 shall be subject to all provisions of this Judgment, including reduction in Production necessary to
2 implement the Physical Solution and the requirements to pay assessments, but shall not be
3 entitled to benefits provided by Stipulation, including but not limited to Carry Over pursuant to
4 Paragraph 15 and Transfers pursuant to Paragraph 16. If the total Production by Non-Stipulating
5 Parties is less than seven percent (7%) of the Native Safe Yield, such Production will be
6 addressed when Native Safe Yield is reviewed pursuant to Paragraph 18.5.9. If the total
7 Production by Non-Stipulating Parties is greater than seven percent (7%) of the Native Safe
8 Yield, the Watermaster shall determine whether Production by Non-Stipulating Parties would
9 cause Material Injury, in which case the Watermaster shall take action to mitigate the Material
10 Injury, including, but not limited to, imposing a Balance Assessment, provided however, that the
11 Watermaster shall not recommend any changes to the allocations under Exhibits 3 and 4 prior to
12 the redetermination of Native Safe Yield pursuant to Paragraph 18.5.9. In all cases, however,
13 whenever the Watermaster re-determines the Native Safe Yield pursuant to Paragraph 18.5.9, the
14 Watermaster shall take action to prevent Native Safe Yield Production from exceeding the Native
15 Safe Yield on a long-term basis.

16 **5.2 Rights to Imported Water Return Flows.**

17 **5.2.1 Rights to Imported Water Return Flows.** Return Flows from
18 Imported Water used within the Basin which net augment the Basin Groundwater supply are not a
19 part of the Native Safe Yield. Subject to review pursuant to Paragraph 18.5.11, Imported Water
20 Return Flows from Agricultural Imported Water use are 34% and Imported Water Return Flows
21 from Municipal and Industrial Imported Water use are 39% of the amount of Imported Water
22 used.

23 **5.2.2 Water Imported Through AVEK.** The right to Produce Imported
24 Water Return Flows from water imported through AVEK belongs exclusively to the Parties
25 identified on Exhibit 8, attached hereto, and incorporated herein by reference. Each Party shown
26 on Exhibit 8 shall have a right to Produce an amount of Imported Water Return Flows in any
27 Year equal to the applicable percentage multiplied by the average amount of Imported Water used
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1 by that Party within the Basin in the preceding five Year period (not including Imported Stored
2 Water in the Basin). Any Party that uses Imported Water on lands outside the Basin but within the
3 watershed of the Basin shall be entitled to Produce Imported Water Return Flows to the extent
4 such Party establishes to the satisfaction of the Watermaster the amount that its Imported Water
5 Return Flows augment the Basin Groundwater supply. This right shall be in addition to that
6 Party's Overlying or Non-Overlying Production Right. Production of Imported Water Return
7 Flows is not subject to the Replacement Water Assessment. All Imported Water Return Flows
8 from water imported through AVEK and not allocated to Parties identified in Exhibit 8 belong
9 exclusively to AVEK, unless otherwise agreed by AVEK. Notwithstanding the foregoing, Boron
10 Community Services District shall have the right to Produce Imported Water Return Flows, up to
11 78 acre-feet annually, based on the applicable percentage multiplied by the average amount of
12 Imported Water used by Boron Community Services District outside the Basin, but within its
13 service area in the preceding five Year period (not including Imported Stored Water in the Basin)
14 without having to establish that the Imported Water Return Flows augment the Basin
15 Groundwater supply.

16 **5.2.3 Water Not Imported Through AVEK.** After entry of this
17 Judgment, a Party other than AVEK that brings Imported Water into the Basin from a source
18 other than AVEK shall notify the Watermaster each Year quantifying the amount and uses of the
19 Imported Water in the prior Year. The Party bringing such Imported Water into the Basin shall
20 have a right to Produce an amount of Imported Water Return Flows in any Year equal to the
21 applicable percentage set forth above multiplied by the average annual amount of Imported Water
22 used by that Party within the Basin in the preceding five Year period (not including Imported
23 Stored Water in the Basin).

24 **5.3 Rights to Recycled Water.** The owner of a waste water treatment plant
25 operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive
26 right to the Recycled Water as against anyone who has supplied the water discharged into the
27 waste water collection and treatment system. At the time of this Judgment those Parties that
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1 produce Recycled Water are Los Angeles County Sanitation Districts No. 14 and No. 20,
2 Rosamond Community Services District, and Edwards Air Force Base. Nothing in this Judgment
3 affects or impairs this ownership or any existing or future agreements for the use of Recycled
4 Water within the Basin.

5 **6. INJUNCTION**

6 **6.1 Injunction Against Unauthorized Production.** Each and every Party, its
7 officers, directors, agents, employees, successors, and assigns, except for the United States, is
8 ENJOINED AND RESTRAINED from Producing Groundwater from the Basin except pursuant
9 to this Judgment. Without waiving or foreclosing any arguments or defenses it might have, the
10 United States agrees that nothing herein prevents or precludes the Watermaster or any Party from
11 seeking to enjoin the United States from Producing water in excess of its 7,600 acre-foot per Year
12 Reserved Water Right if and to the extent the United States has not paid the Replacement
13 Assessments for such excess Production or entered into written consent to the imposition of
14 Replacement Assessments as described in Paragraph 9.2.

15 **6.2 Injunction Re Change in Purpose of Use Without Notice to The**
16 **Watermaster.** Each and every Party, its officers, directors, agents, employees, successors, and
17 assigns, is ENJOINED AND RESTRAINED from changing its Purpose of Use of Groundwater at
18 any time without notifying the Watermaster.

19 **6.3 Injunction Against Unauthorized Capture of Stored Water.** Each and
20 every Party, its officers, directors, agents, employees, successors and assigns, is ENJOINED
21 AND RESTRAINED from claiming any right to Produce the Stored Water that has been
22 recharged in the Basin, except pursuant to a Storage Agreement with the Watermaster, and as
23 allowed by this Judgment, or pursuant to water banking operations in existence and operating at
24 the time of this Judgment as identified in Paragraph 14. This Paragraph does not prohibit Parties
25 from importing water into the Basin for direct use, or from Producing or using Imported Water
26 Return Flows owned by such Parties pursuant to Paragraph 5.2.

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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1 Groundwater Production exempt from a Replacement Water Assessment under this Drought
2 Program in any Year in which the Drought Program Participant has placed water from such
3 sources described in this Paragraph 8.4.2 into storage or has transferred such water to another
4 Person or entity.

5 **8.4.3** During the Rampdown period, the Drought Program Participants
6 will be exempt from the requirement to pay a Replacement Water Assessment for Groundwater
7 Production in excess of their respective rights to Produce Groundwater under this Judgment up to
8 a total of 40,000 acre-feet over the Rampdown Period with a maximum of 20,000 acre-feet in any
9 single Year for District No. 40 and a total of 5,000 acre-feet over the Rampdown Period for all
10 other Drought Program Participants combined. During any Year that excess Groundwater is
11 produced under this Drought Program, all Groundwater Production by the Drought Program
12 Participants will be for the purpose of a direct delivery to customers served within their respective
13 service areas and will not be transferred to other users within the Basin.

14 **8.4.4** Notwithstanding the foregoing, the Drought Program Participants
15 remain subject to the Material Injury limitation as provided in this Judgment.

16 **8.4.5** Notwithstanding the foregoing, the Drought Program Participants
17 remain subject to a Balance Assessment as provided in Paragraph 9.3 of this Judgment.

18 **9. ASSESSMENTS.**

19 **9.1 Administrative Assessment.** Administrative Assessments to fund the
20 Administrative Budget adopted by the Watermaster shall be levied uniformly on an annual basis
21 against (1) each acre foot of a Party's Production Right as described in Paragraph 5.1, (2) each
22 acre foot of a Party's right to Produce Imported Water Return Flows as determined pursuant to
23 Paragraph 5.2, (3) each acre foot of a Party's Production for which a Replacement Water
24 Assessment has been imposed pursuant to Paragraph 9.2, and (4) during the Rampdown, each
25 acre foot of a Party's Production in excess of (1)-(3), above, excluding Production from Stored
26 Water and/or Carry Over water, except that the United States shall be subject to the
27 Administrative Assessment only on the actual Production of the United States. During the
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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 member of the Non-Pumper Class must comply with the New Production Application Procedure
2 specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-Pumper Class has
3 established a Production Right to the reasonable and beneficial use of Groundwater based on their
4 unexercised claim of right to Produce Groundwater; (4) if in the future a member of the Non-
5 Pumper Class proposes to Produce Groundwater for reasonable and beneficial use, the
6 Watermaster as part of the New Production Application Procedure, has the authority to determine
7 whether such a member has established that the proposed New Production is a reasonable and
8 beneficial use in the context of other existing uses of Groundwater and then-current Basin
9 conditions; and (5) the Watermaster's determinations as to the approval, scope, nature and priority
10 of any New Production is reasonably necessary to the promotion of the State's interest in fostering
11 the most reasonable and beneficial use of its scarce water resources. All provisions of this
12 Judgment regarding the administration, use and enforcement of the Replacement Water
13 Assessment shall apply to each Non-Pumper Class member that Produces Groundwater. Prior to
14 the commencement of Production, each Producing Non-Pumper Class member shall install a
15 meter and report Production to the Watermaster. The Court finds that this Judgment is consistent
16 with the Non-Pumper Stipulation of Settlement and Judgment.

17 **9.3 Balance Assessment.** In order to ensure that after Rampdown each Party
18 may fully exercise its Production Right, there may be a Balance Assessment imposed by the
19 Watermaster. The Balance Assessment shall be assessed on all Production Rights, excluding the
20 United States' actual Production, but including that portion of the Federal Reserved Right
21 Produced by other Parties, in an amount determined by the Watermaster. A Balance Assessment
22 may not be imposed until after the end of the Rampdown. In determining whether to adopt a
23 Balance Assessment, and in what amount, the Watermaster Engineer shall consider current Basin
24 conditions as well as then-current pumping existing after Rampdown exclusive of any
25 consideration of an effect on then-current Basin conditions relating to Production of Groundwater
26 pursuant to the Drought Program which occurred during the Rampdown, and shall only assess a
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1 Balance Assessment or curtail a Party's Production under section 9.3.4 below, to avoid or
2 mitigate Material Injury that is caused by Production after the completion of the Rampdown.

3 **9.3.1** Any proceeds of the Balance Assessment will be used to purchase,
4 deliver, produce in lieu, or arrange for alternative pumping sources of water in the Basin, but shall
5 not include infrastructure costs.

6 **9.3.2** The Watermaster Engineer shall determine and collect from any
7 Party receiving direct benefit of the Balance Assessment proceeds an amount equal to that Party's
8 avoided Production costs.

9 **9.3.3** The Balance Assessment shall not be used to benefit the United
10 States unless the United States participates in paying the Balance Assessment.

11 **9.3.4** The Watermaster Engineer may curtail the exercise of a Party's
12 Production Right under this Judgment, except the United States' Production, if it is determined
13 necessary to avoid or mitigate a Material Injury to the Basin and provided that the Watermaster
14 provides an equivalent quantity of water to such Party as a substitute water supply, with such
15 water paid for from the Balance Assessment proceeds.

16 **10. SUBAREAS.** Subject to modification by the Watermaster the following Subareas
17 are recognized:

18 **10.1 Central Antelope Valley Subarea.** The Central Antelope Valley Subarea
19 is the largest of the five Subareas and underlies Rosamond, Quartz Hill, Lancaster, Edwards AFB
20 and much of Palmdale. This Subarea also contains the largest amount of remaining agricultural
21 land use in the Basin. The distinctive geological features of the Central Antelope Valley Subarea
22 are the presence of surficial playa and pluvial lake deposits; the widespread occurrence of thick,
23 older pluvial lake bed deposits; and alluvial deposits from which Groundwater is produced above
24 and below the lake bed deposits. The Central Antelope Valley Subarea is defined to be east of the
25 largely buried ridge of older granitic and tertiary rocks exposed at Antelope Buttes and extending
26 beyond Little Buttes and Tropico Hill. The Central Subarea is defined to be southwest and
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1 northeast of the extension of the Buttes Fault, and northwest of an unnamed fault historically
2 identified from Groundwater level differences, as shown on Exhibit 10.

3 **10.2 West Antelope Valley Subarea.** The West Antelope Valley Subarea is
4 the second largest subarea. The area is characterized by a lack of surficial lake bed deposits, and
5 little evidence of widespread subsurface lake beds, and thick alluvial deposits. The Western
6 Antelope Valley Subarea is defined to be south of the Willow Springs-Cottonwood Fault and
7 west of a largely buried ridge of older granitic and tertiary rocks that are exposed at Antelope
8 Buttes and Little Buttes, and continue to Tropico Hill, as shown on Exhibit 10.

9 **10.3 South East Subarea.** The South East Subarea is characterized by granitic
10 buttes to the north, shallow granitic rocks in the southwest, and a lack of lake bed deposits. The
11 South East Subarea is defined to encompass the remainder of the Basin from the unnamed fault
12 between the Central and South East subareas, to the county-line boundary of the Basin. Notably,
13 this area contains Littlerock and Big Rock creeks that emanate from the mountains to the south
14 and discharge onto the valley floor.

15 **10.4 Willow Springs Subarea.** The Willow Springs Subarea is separated from
16 the West Antelope Subarea primarily because the Willow Springs fault shows some signs of
17 recent movement and there is substantial Groundwater hydraulic separation between the two
18 adjacent areas, suggesting that the fault significantly impedes Groundwater flow from the Willow
19 Springs to the lower West Antelope Subarea. Otherwise, the Willow Springs Subarea is
20 comparable in land use to the West Antelope Subarea, with some limited agricultural land use and
21 no municipal development, as shown on Exhibit 10.

22 **10.5 Rogers Lake Subarea.** The Rogers Lake Subarea is characterized by
23 surficial pluvial Lake Thompson and playa deposits, and a narrow, fault-bound, central trough
24 filled with alluvial deposits. The area is divided into north and south subareas on opposite sides
25 of a buried ridge of granite rock in the north lake, as shown on Exhibit 10.

26 **11. INCREASE IN PRODUCTION BY THE UNITED STATES.**
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1 **11.1 Notice of Increase of Production Under Federal Reserved Water**
2 **Right.** After the date of entry of this Judgment, the United States shall provide the Watermaster
3 with at least ninety (90) days advanced notice if Production by the United States is reasonably
4 anticipated to increase more than 200 acre-feet per Year in a following 12 month period.

5 **11.2 Water Substitution to Reduce Production by United States.** The United
6 States agrees that maximizing Imported Water is essential to improving the Basin’s health and
7 agrees that its increased demand can be met by either increasing its Production or by accepting
8 deliveries of Imported Water of sufficient quality to meet the purpose of its Federal Reserved
9 Water Right under the conditions provided for herein. Any Party may propose a water
10 substitution or replacement to the United States to secure a reduction in Groundwater Production
11 by the United States. Such an arrangement would be at the United States’ sole discretion and
12 subject to applicable federal law, regulations and other requirements. If such a substitution or
13 replacement arrangement is agreed upon, the United States shall reduce Production by the amount
14 of Replacement Water provided to it, and the Party providing such substitution or replacement of
15 water to the United States may Produce a corresponding amount of Native Safe Yield free from
16 Replacement Water Assessment in addition to their Production Right.

17 **12. MOVEMENT OF PUBLIC WATER SUPPLIERS PRODUCTION**
18 **FACILITIES.**

19 **12.1 No Requirement to Move Public Water Suppliers’ Production Wells.**
20 One or more of the Public Water Suppliers intend to seek Federal or State legislation to pay for
21 all costs related to moving the Public Water Suppliers Production wells to areas that will reduce
22 the impact of Public Water Supplier Production on the United States’ current Production wells.
23 The Public Water Suppliers shall have no responsibility to move any Production wells until
24 Federal or State legislation fully funding the costs of moving the wells is effective or until
25 required to do so by order of this Court which order shall not be considered or made by this Court
26 until the seventeenth (17th) Year after entry of this Judgment. The Court may only make such an
27 order if it finds that the Public Water Supplier Production from those wells is causing Material
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1 Injury. The Court shall not impose the cost of moving the Public Water Supplier Production
2 Facilities on any non-Public Water Supplier Party to this Judgment.

3 **13. FEDERAL APPROVAL.** This Judgment is contingent on final approval by the
4 Department of Justice. Such approval will be sought upon final agreement of the terms of this
5 Judgment by the settling Parties. Nothing in this Judgment shall be interpreted or construed as a
6 commitment or requirement that the United States obligate or pay funds in contravention of the
7 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. Nothing in this
8 Judgment, specifically including Paragraphs 9.1, 9.2 and 9.3, shall be construed to deprive any
9 federal official of the authority to revise, amend, or promulgate regulations. Nothing in this
10 Judgment shall be deemed to limit the authority of the executive branch to make
11 recommendations to Congress on any particular piece of legislation. Nothing in this Judgment
12 shall be construed to commit a federal official to expend federal funds not appropriated by
13 Congress. To the extent that the expenditure or advance of any money or the performance of any
14 obligation of the United States under this Judgment is to be funded by appropriation of funds by
15 Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of
16 funds by Congress that are available for this purpose and the apportionment of such funds by the
17 Office of Management and Budget and certification by the appropriate Air Force official that
18 funding is available for this purpose, and an affirmative obligation of the funds for payment made
19 by the appropriate Air Force official. No breach of this Judgment shall result and no liability
20 shall accrue to the United States in the event such funds are not appropriated or apportioned.

21 **14. STORAGE.** All Parties shall have the right to store water in the Basin pursuant to
22 a Storage Agreement with the Watermaster. If Littlerock Creek Irrigation District or Palmdale
23 Water District stores Imported Water in the Basin it shall not export from its service area that
24 Stored Water. AVEK, Littlerock Creek Irrigation District or Palmdale Water District may enter
25 into exchanges of their State Water Project "Table A" Amounts. Nothing in this Judgment limits
26 or modifies operation of preexisting banking projects (including AVEK, District No. 40, Antelope
27 Valley Water Storage LLC, Tejon Ranchcorp and Tejon Ranch Company, Sheep Creek Water
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1 Co., Rosamond Community Services District and Palmdale Water District) or performance of
2 preexisting exchange agreements of the Parties. The Watermaster shall promptly enter into
3 Storage Agreements with the Parties at their request. The Watermaster shall not enter into
4 Storage Agreements with non-Parties unless such non-Parties become expressly subject to the
5 provisions of this Judgment and the jurisdiction of the Court. Storage Agreements shall expressly
6 preclude operations which will cause a Material Injury on any Producer. If, pursuant to a Storage
7 Agreement, a Party has provided for pre-delivery or post-delivery of Replacement Water for the
8 Party's use, the Watermaster shall credit such water to the Party's Replacement Water Obligation
9 at the Party's request. Any Stored Water that originated as State Water Project water imported by
10 AVEK, Palmdale Water District or Littlerock Creek Irrigation District may be exported from the
11 Basin for use in a portion of the service area of any city or public agency, including State Water
12 Project Contractors, that are Parties to this action at the time of this Judgment and whose service
13 area includes land outside the Basin. AVEK may export any of its Stored State Project Water to
14 any area outside its jurisdictional boundaries and the Basin provided that all water demands
15 within AVEK's jurisdictional boundaries are met. Any Stored Water that originated as other
16 Imported Water may be exported from the Basin, subject to a requirement that the Watermaster
17 make a technical determination of the percentage of the Stored Water that is unrecoverable and
18 that such unrecoverable Stored Water is dedicated to the Basin.

19 **15. CARRY OVER**

20 **15.1 In Lieu Production Right Carry Over.** Any Producer identified in
21 Paragraph 5.1.1, 5.1.5 and 5.1.6 can utilize In Lieu Production by purchasing Imported Water and
22 foregoing Production of a corresponding amount of the annual Production of Native Safe Yield
23 provided for in Paragraph 5 herein. In Lieu Production must result in a net reduction of annual
24 Production from the Native Safe Yield in order to be entitled to the corresponding Carry Over
25 benefits under this paragraph. In Lieu Production does not make additional water from the Native
26 Safe Yield available to any other Producer. If a Producer foregoes pumping and uses Imported
27 Water In Lieu of Production, the Producer may Carry Over its right to the unproduced portion of
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1 its Production Right for up to ten (10) Years. A Producer must Produce its full current Year's
2 Production Right before any Carry Over water is Produced. Carry Over water will be Produced
3 on a first-in, first-out basis. At the end of the Carry Over period, the Producer may enter into a
4 Storage Agreement with the Watermaster to store unproduced portions, subject to terms and
5 conditions in the Watermaster's discretion. Any such Storage Agreements shall expressly
6 preclude operations, including the rate and amount of extraction, which will cause a Material
7 Injury to another Producer or Party, any subarea or the Basin. If not converted to a Storage
8 Agreement, Carry Over water not Produced by the end of the tenth Year reverts to the benefit of
9 the Basin and the Producer no longer has a right to the Carry Over water. The Producer may
10 transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.

11 **15.2 Imported Water Return Flow Carry Over.** If a Producer identified in
12 Paragraph 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full amount of Imported Water Return Flows
13 in the Year following the Year in which the Imported Water was brought into the Basin, the
14 Producer may Carry Over its right to the unproduced portion of its Imported Water Return Flows
15 for up to ten (10) Years. A Producer must Produce its full Production Right before any Carry
16 Over water, or any other water, is Produced. Carry Over water will be Produced on a first-in,
17 first-out basis. At the end of the Carry Over period, the Producer may enter into a Storage
18 Agreement with the Watermaster to store unproduced portions, subject to terms and conditions in
19 the Watermaster's discretion. Any such Storage Agreements shall expressly preclude operations,
20 including the rate and amount of extraction, which will cause a Material Injury to another
21 Producer or Party, any subarea or the Basin. If not converted to a Storage Agreement, Carry Over
22 water not Produced by the end of the tenth Year reverts to the benefit of the Basin and the
23 Producer no longer has a right to the Carry Over water. The Producer may transfer any Carry
24 Over water or Carry Over water stored pursuant to a Storage Agreement.

25 **15.3 Production Right Carry Over.** If a Producer identified in Paragraph
26 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full Production Right in any Year, the Producer may
27 Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years. A
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1 Producer must Produce its full Production Right before any Carry Over water, or any other water,
2 is Produced. Carry Over water will be Produced on a first-in, first-out basis. At the end of the
3 Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to
4 store unproduced portions, subject to terms and conditions in the Watermaster's discretion. Any
5 such Storage Agreements shall expressly preclude operations, including the rate and amount of
6 extraction, which will cause a Material Injury to another Producer or Party, any subarea or the
7 Basin. If not converted to a Storage Agreement, Carry Over water not Produced by the end of the
8 tenth Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry
9 Over water. The Producer may transfer any Carry Over water or Carry Over water stored
10 pursuant to a Storage Agreement.

11 **16. TRANSFERS.**

12 **16.1 When Transfers are Permitted.** Pursuant to terms and conditions to be
13 set forth in the Watermaster rules and regulations, and except as otherwise provided in this
14 Judgment, Parties may transfer all or any portion of their Production Right to another Party so
15 long as such transfer does not cause Material Injury. All transfers are subject to hydrologic
16 review by the Watermaster Engineer.

17 **16.2 Transfers to Non-Overlying Production Right Holders.** Overlying
18 Production Rights that are transferred to Non-Overlying Production Right holders shall remain on
19 Exhibit 4 and be subject to adjustment as provided in Paragraph 18.5.10, but may be used
20 anywhere in the transferee's service area.

21 **16.3 Limitation on Transfers of Water by Antelope Valley United Mutuals**
22 **Group.** After the date of this Judgment, any Overlying Production Rights pursuant to Paragraph
23 5.1.1, rights to Imported Water Return Flows pursuant to Paragraph 5.2, rights to Recycled Water
24 pursuant to Paragraph 5.3 and Carry Over water pursuant to Paragraph 15 (including any water
25 banked pursuant to a Storage Agreement with the Watermaster) that are at any time held by any
26 member of the Antelope Valley United Mutuals Group may only be transferred to or amongst
27 other members of the Antelope Valley United Mutuals Group, except as provided in Paragraph
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1 16.3.1. Transfers amongst members of the Antelope Valley United Mutuals Group shall be
2 separately reported in the Annual Report of the Watermaster pursuant to Paragraphs 18.4.8 and
3 18.5.17. Transfers amongst members of the Antelope Valley United Mutuals Group shall not be
4 deemed to constitute an abandonment of any member's non-transferred rights.

5 **16.3.1** Nothing in Paragraph 16.3 shall prevent Antelope Valley United
6 Mutuals Group members from transferring Overlying Production Rights to Public Water
7 Suppliers who assume service of an Antelope Valley United Mutuals Group member's
8 shareholders.

9 **16.4** Notwithstanding section 16.1, the Production Right of Boron Community
10 Services District shall not be transferable. If and when Boron Community Services District
11 permanently ceases all Production of Groundwater from the Basin, its Production Right shall be
12 allocated to the other holders of Non-Overlying Production Rights, except for West Valley
13 County Water District, in proportion to those rights.

14 **17. CHANGES IN POINT OF EXTRACTION AND NEW WELLS.** Parties may
15 change the point of extraction for any Production Right to another point of extraction so long as
16 such change of the point of extraction does not cause Material Injury. A replacement well for an
17 existing point of extraction which is located within 300 feet of a Party's existing well shall not be
18 considered a change in point of extraction.

19 **17.1 Notice of New Well.** Any Party seeking to construct a new well in order to
20 change the point of extraction for any Production Right to another point of extraction shall notify
21 the Watermaster at least 90 days in advance of drilling any well of the location of the new point
22 of extraction and the intended place of use of the water Produced.

23 **17.2 Change in Point of Extraction by the United States.** The point(s) of
24 extraction for the Federal Reserved Water Right may be changed, at the sole discretion of the
25 United States, and not subject to the preceding limitation on Material Injury, to any point or
26 points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction
27 for the Federal Reserved Water Right may be changed to points outside the boundaries of
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1 Edwards Air Force Base or Plant 42, provided such change in the point of extraction does not
2 cause Material Injury. In exercising its discretion under this Paragraph 17.2, the United States
3 shall consider information in its possession regarding the effect of Production from the intended
4 new point of extraction on the Basin, and on other Producers. Any such change in point(s) of
5 extraction shall be at the expense of the United States. Nothing in this Paragraph is intended to
6 waive any monetary claim(s) another Party may have against the United States in federal court
7 based upon any change in point of extraction by the United States.

8 **18. WATERMASTER**

9 **18.1 Appointment of Initial Watermaster.**

10 **18.1.1** Appointment and Composition: The Court hereby appoints a
11 Watermaster. The Watermaster shall be a five (5) member board composed of one representative
12 each from AVEK and District No. 40, a second Public Water Supplier representative selected by
13 District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation
14 District, California Water Service Company, Desert Lake Community Services District, North
15 Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch Irrigation District, and
16 Rosamond Community Services District, and two (2) landowner Parties, exclusive of public
17 agencies and members of the Non-Pumper and Small Pumper Classes, selected by majority vote
18 of the landowners identified on Exhibit 4 (or their successors in interest) based on their
19 proportionate share of the total Production Rights identified in Exhibit 4. The United States may
20 also appoint a non-voting Department of Defense (DoD) Liaison to the Watermaster committee to
21 represent DoD interests. Participation by the DoD Liaison shall be governed by Joint Ethics
22 Regulation 3-201. The opinions or actions of the DoD liaison in participating in or contributing
23 to Watermaster proceedings cannot bind DoD or any of its components.

24 **18.1.2** Voting Protocol for Watermaster Actions:

25 **18.1.2.1** The Watermaster shall make decisions by unanimous vote
26 for the purpose of selecting or dismissing the Watermaster Engineer.
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1 **18.1.2.2** The Watermaster shall determine by unanimous vote, after
2 consultation with the Watermaster Engineer, the types of decisions that shall require unanimous
3 vote and those that shall require only a simple majority vote.

4 **18.1.2.3** All decisions of the Watermaster, other than those
5 specifically designated as being subject to a simple majority vote, shall be by a unanimous vote.

6 **18.1.2.4** All board members must be present to make any decision
7 requiring a unanimous vote.

8 **18.1.3** In carrying out this appointment, the Watermaster shall segregate
9 and separately exercise in all respects the Watermaster powers delegated by the Court under this
10 Judgment. All funds received, held, and disbursed by the Watermaster shall be by way of
11 separate Watermaster accounts, subject to separate accounting and auditing. Meetings and
12 hearings held by the Watermaster shall be noticed and conducted separately.

13 **18.1.4** Pursuant to duly adopted Watermaster rules, Watermaster staff and
14 administrative functions may be accomplished by AVEK, subject to strict time and cost
15 accounting principles so that this Judgment does not subsidize, and is not subsidized by AVEK.

16 **18.2 Standard of Performance.** The Watermaster shall carry out its duties,
17 powers and responsibilities in an impartial manner without favor or prejudice to any Subarea,
18 Producer, Party, or Purpose of Use.

19 **18.3 Removal of Watermaster.** The Court retains and reserves full
20 jurisdiction, power, and authority to remove any Watermaster for good cause and substitute a new
21 Watermaster in its place, upon its own motion or upon motion of any Party in accordance with the
22 notice and hearing procedures set forth in Paragraph 20.6. The Court shall find good cause for
23 the removal of a Watermaster upon a showing that the Watermaster has: (1) failed to exercise its
24 powers or perform its duties; (2) performed its powers in a biased manner; or (3) otherwise failed
25 to act in the manner consistent with the provisions set forth in this Judgment or subsequent order
26 of the Court.

1 **18.4 Powers and Duties of the Watermaster.** Subject to the continuing
2 supervision and control of the Court, the Watermaster shall have and may exercise the following
3 express powers and duties, together with any specific powers and duties set forth elsewhere in
4 this Judgment or ordered by the Court:

5 **18.4.1 Selection of the Watermaster Engineer.** The Watermaster shall
6 select the Watermaster Engineer with the advice of the Advisory Committee described in
7 Paragraph 19.

8 **18.4.2 Adoption of Rules and Regulations.** The Court may adopt
9 appropriate rules and regulations prepared by the Watermaster Engineer and proposed by the
10 Watermaster for conduct pursuant to this Judgment. Before proposing rules and regulations, the
11 Watermaster shall hold a public hearing. Thirty (30) days prior to the date of the hearing, the
12 Watermaster shall send to all Parties notice of the hearing and a copy of the proposed rules and
13 regulations or amendments thereto. All Watermaster rules and regulations, and any amendments
14 to the Watermaster rules and regulations, shall be consistent with this Judgment and are subject to
15 approval by the Court, for cause shown, after consideration of the objections of any Party.

16 **18.4.3 Employment of Experts and Agents.** The Watermaster may
17 employ such administrative personnel, engineering, legal, accounting, or other specialty services,
18 and consulting assistants as appropriate in carrying out the terms of this Judgment.

19 **18.4.4 Notice List.** The Watermaster shall maintain a current list of
20 Parties to receive notice. The Parties have an affirmative obligation to provide the Watermaster
21 with their current contact information. For Small Pumper Class Members, the Watermaster shall
22 initially use the contact information contained in the list of Small Pumper Class members filed
23 with the Court by class counsel.

24 **18.4.5 Annual Administrative Budget.** The Watermaster shall prepare a
25 proposed administrative budget for each Year. The Watermaster shall hold a public hearing
26 regarding the proposed administrative budget and adopt an administrative budget. The
27 administrative budget shall set forth budgeted items and Administrative Assessments in sufficient
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1 detail to show the allocation of the expense among the Producers. Following the adoption of the
2 budget, the Watermaster may make expenditures within budgeted items in the exercise of powers
3 herein granted, as a matter of course.

4 **18.4.6 Investment of Funds.** The Watermaster may hold and invest any
5 funds in investments authorized from time to time for public agencies in the State of California.
6 All funds shall be held in separate accounts and not comingled with the Watermaster's personal
7 funds.

8 **18.4.7 Borrowing.** The Watermaster may borrow in anticipation of
9 receipt of proceeds from any assessments authorized in Paragraph 9 in an amount not to exceed
10 the annual amount of assessments.

11 **18.4.8 Transfers.** On an annual basis, the Watermaster shall prepare and
12 maintain a report or record of any transfer of Production Rights among Parties. Upon reasonable
13 request, the Watermaster shall make such report or record available for inspection by any Party.
14 A report or records of transfer of Production Rights under this Paragraph shall be considered a
15 ministerial act.

16 **18.4.9 New Production Applications.** The Watermaster shall consider
17 and determine whether to approve applications for New Production after consideration of the
18 recommendation of the Watermaster Engineer.

19 **18.4.10 Unauthorized Actions.** The Watermaster shall bring such action
20 or motion as is necessary to enjoin any conduct prohibited by this Judgment.

21 **18.4.11 Meetings and Records.** Watermaster shall provide notice of and
22 conduct all meetings and hearings in a manner consistent with the standards and timetables set
23 forth in the Ralph M. Brown Act, Government Code sections 54950, et seq. Watermaster shall
24 make its files and records available to any Person consistent with the standards and timetables set
25 forth in the Public Records Act, Government Code sections 6200, et seq.

26 **18.4.12 Assessment Procedure.** Each Party hereto is ordered to pay the
27 assessments authorized in Paragraph 9 of this Judgment, which shall be levied and collected in
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accordance with the procedures and schedules determined by the Watermaster. Any assessment which becomes delinquent, as defined by rules and regulations promulgated by the Watermaster shall bear interest at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located. The United States shall not be subject to payment of interest absent congressional waiver of immunity for the imposition of such interest. This interest rate shall apply to any said delinquent assessment from the due date thereof until paid. The delinquent assessment, together with interest thereon, costs of suit, attorneys fees and reasonable costs of collection, may be collected pursuant to (1) motion by the Watermaster giving notice to the delinquent Party only; (2) Order to Show Cause proceeding, or (3) such other lawful proceeding as may be instituted by the Watermaster or the Court. The United States shall not be subject to costs and fees absent congressional waiver of immunity for such costs and fees. The delinquent assessment shall constitute a lien on the property of the Party as of the same time and in the same manner as does the tax lien securing county property taxes. The property of the United States shall not be subject to any lien. The Watermaster shall annually certify a list of all such unpaid delinquent assessments. The Watermaster shall include the names of those Parties and the amounts of the liens in its list to the County Assessor's Office in the same manner and at the same time as it does its Administrative Assessments. Watermaster shall account for receipt of all collections of assessments collected pursuant to this Judgment, and shall pay such amounts collected pursuant to this Judgment to the Watermaster. The Watermaster shall also have the ability to seek to enjoin Production of those Parties, other than the United States, who do not pay assessments pursuant to this Judgment.

18.5 Watermaster Engineer. The Watermaster Engineer shall have the following duties:

18.5.1 Monitoring of Safe Yield. The Watermaster Engineer shall monitor all the Safe Yield components and include them in the annual report for Court approval. The annual report shall include all relevant data for the Basin.

1 **18.5.2 Reduction in Groundwater Production.** The Watermaster
2 Engineer shall ensure that reductions of Groundwater Production to the Native Safe Yield
3 (Rampdown) take place pursuant to the terms of this Judgment and any orders by the Court.

4 **18.5.3 Determination of Replacement Obligations.** The Watermaster
5 Engineer shall determine Replacement Obligations for each Producer, pursuant to the terms of
6 this Judgment.

7 **18.5.4 Balance Obligations.** The Watermaster Engineer shall determine
8 Balance Assessment obligations for each Producer pursuant to the terms of this Judgment. In
9 addition, the Watermaster Engineer shall determine the amount of water derived from the Balance
10 Assessment that shall be allocated to any Producer to enable that Producer to fully exercise its
11 Production Right.

12 **18.5.5 Measuring Devices, Etc.** The Watermaster Engineer shall
13 propose, and the Watermaster shall adopt and maintain, rules and regulations regarding
14 determination of Production amounts and installation of individual water meters. The rules and
15 regulations shall set forth approved devices or methods to measure or estimate Production.
16 Producers who meter Production on the date of entry of this Judgment shall continue to meter
17 Production. The Watermaster rules and regulations shall require Producers who do not meter
18 Production on the effective date of entry of this Judgment, except the Small Pumper Class, to
19 install water meters within two Years.

20 **18.5.6 Hydrologic Data Collection.** The Watermaster Engineer shall (1)
21 operate, and maintain such wells, measuring devices, and/or meters necessary to monitor stream
22 flow, precipitation, Groundwater levels, and Basin Subareas, and (2) to obtain such other data as
23 may be necessary to carry out this Judgment.

24 **18.5.7 Purchases of and Recharge with Replacement Water.** To the
25 extent Imported Water is available, the Watermaster Engineer shall use Replacement Water
26 Assessment proceeds to purchase Replacement Water, and deliver such water to the area deemed
27 most appropriate as soon as practicable. The Watermaster Engineer may pre-purchase
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1 Replacement Water and apply subsequent assessments towards the costs of such pre-purchases.
2 The Watermaster Engineer shall reasonably and equitably actively manage the Basin to protect
3 and enhance the health of the Basin.

4 **18.5.8 Water Quality.** The Watermaster Engineer shall take all
5 reasonable steps to assist and encourage appropriate regulatory agencies to enforce reasonable
6 water quality regulations affecting the Basin, including regulation of solid and liquid waste
7 disposal, and establishing Memorandums of Understanding with Kern and Los Angeles Counties
8 regarding well drilling ordinances and reporting.

9 **18.5.9 Native Safe Yield.** Ten (10) Years following the end of the seven
10 Year Rampdown period, in the seventeenth (17th) Year, or any time thereafter, the Watermaster
11 Engineer may recommend to the Court an increase or reduction of the Native Safe Yield. The
12 Watermaster Engineer shall initiate no recommendation to change Native Safe Yield prior to the
13 end of the seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its
14 report to the Court that the Native Safe Yield be revised based on the best available science, the
15 Court shall conduct a hearing regarding the recommendations and may order a change in Native
16 Safe Yield. Watermaster shall give notice of the hearing pursuant to Paragraph 20.3.2. The most
17 recent Native Safe Yield shall remain in effect until revised by Court order according to this
18 paragraph. If the Court approves a reduction in the Native Safe Yield, it shall impose a Pro-Rata
19 Reduction as set forth herein, such reduction to be implemented over a seven (7) Year period. If
20 the Court approves an increase in the Native Safe Yield, it shall impose a Pro-Rata Increase as set
21 forth herein, such increase to be implemented immediately. Only the Court can change the
22 Native Safe Yield.

23 **18.5.10 Change in Production Rights in Response to Change in Native**
24 **Safe Yield.** In the event the Court changes the Native Safe Yield pursuant to Paragraph 18.5.9,
25 the increase or decrease will be allocated among the Producers in the agreed percentages listed in
26 Exhibits 3 and 4, except that the Federal Reserved Water Right of the United States is not subject
27 to any increase or decrease.

1 **18.5.11 Review of Calculation of Imported Water Return Flow**

2 **Percentages.** Ten (10) Years following the end of the Rampdown, in the seventeenth (17th)
3 Year, or any time thereafter, the Watermaster Engineer may recommend to the Court an increase
4 or decrease of Imported Water Return Flow percentages. The Watermaster Engineer shall initiate
5 no recommendation to change Imported Water Return Flow percentages prior to end of the
6 seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its report to the
7 Court that Imported Water Return Flow percentages for the Basin may need to be revised based
8 on the best available science, the Court shall conduct a hearing regarding the recommendations
9 and may order a change in Imported Water Return Flow percentages. Watermaster shall give
10 notice of the hearing pursuant to Paragraph 20.6. The Imported Water Return Flow percentages
11 set forth in Paragraph 5.2 shall remain in effect unless revised by Court order according to this
12 Paragraph. If the Court approves a reduction in the Imported Water Return Flow percentages,
13 such reduction shall be implemented over a seven (7) Year period. Only the Court can change the
14 Imported Water Return Flow percentages.

15 **18.5.12 Production Reports.** The Watermaster Engineer shall require each
16 Producer, other than unmetered Small Pumper Class Members, to file an annual Production report
17 with the Watermaster. Producers shall prepare the Production reports in a form prescribed by the
18 rules and regulations. The Production reports shall state the total Production for the reporting
19 Party, including Production per well, rounded off to the nearest tenth of an acre foot for each
20 reporting period. The Production reports shall include such additional information and supporting
21 documentation as the rules and regulations may reasonably require.

22 **18.5.13 New Production Application Procedure.** The Watermaster
23 Engineer shall determine whether a Party or Person seeking to commence New Production has
24 established the reasonableness of the New Production in the context of all other uses of
25 Groundwater in the Basin at the time of the application, including whether all of the Native Safe
26 Yield is then currently being used reasonably and beneficially. Considering common law water
27 rights and priorities, the mandate of certainty in Article X, section 2, and all other relevant
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1 factors, the Watermaster Engineer has authority to recommend that the application for New
2 Production be denied, or approved on condition of payment of a Replacement Water Assessment.
3 The Watermaster Engineer shall consider, investigate and recommend to the Watermaster
4 whether an application to commence New Production of Groundwater may be approved as
5 follows:

6 **18.5.13.1** All Parties or Person(s) seeking approval from the
7 Watermaster to commence New Production of Groundwater shall submit a written application to
8 the Watermaster Engineer which shall include the following:

9 **18.5.13.1.1** Payment of an application fee sufficient to recover
10 all costs of application review, field investigation, reporting, and hearing, and other associated
11 costs, incurred by the Watermaster and Watermaster Engineer in processing the application for
12 New Production;

13 **18.5.13.1.2** Written summary describing the proposed quantity,
14 sources of supply, season of use, Purpose of Use, place of use, manner of delivery, and other
15 pertinent information regarding the New Production;

16 **18.5.13.1.3** Maps identifying the location of the proposed New
17 Production, including Basin Subarea;

18 **18.5.13.1.4** Copy of any water well permits, specifications and
19 well-log reports, pump specifications and testing results, and water meter specifications
20 associated with the New Production;

21 **18.5.13.1.5** Written confirmation that the applicant has obtained
22 all applicable Federal, State, County, and local land use entitlements and other permits necessary
23 to commence the New Production;

24 **18.5.13.1.6** Written confirmation that the applicant has complied
25 with all applicable Federal, State, County, and local laws, rules and regulations, including but not
26 limited to, the California Environmental Quality Act (Public Resources Code §§ 21000, et. seq.);

18.5.13.1.7 Preparation of a water conservation plan, approved and stamped by a California licensed and registered professional civil engineer, demonstrating that the New Production will be designed, constructed and implemented consistent with California best water management practices.

18.5.13.1.8 Preparation of an analysis of the economic impact of the New Production on the Basin and other Producers in the Subarea of the Basin;

18.5.13.1.9 Preparation of an analysis of the physical impact of the New Production on the Basin and other Producers in the Subarea of the Basin;

18.5.13.1.10 A written statement, signed by a California licensed and registered professional civil engineer, determining that the New Production will not cause **Material Injury**;

18.5.13.1.11 Written confirmation that the applicant agrees to pay the applicable Replacement Water Assessment for any New Production.

18.5.13.1.12 Other pertinent information which the Watermaster Engineer may require.

18.5.13.2 Finding of No Material Injury. The Watermaster Engineer shall not make recommendation for approval of an application to commence New Production of Groundwater unless the Watermaster Engineer finds, after considering all the facts and circumstances including any requirement that the applicant pay a Replacement Water Assessment required by this Judgment or determined by the Watermaster Engineer to be required under the circumstances, that such New Production will not cause Material Injury. If the New Production is limited to domestic use for one single-family household, the Watermaster Engineer has the authority to determine the New Production to be *de minimis* and waive payment of a Replacement Water Assessment; *provided*, the right to Produce such *de minimis* Groundwater is not transferable, and shall not alter the Production Rights decreed in this Judgment.

1 **18.5.13.3 New Production.** No Party or Person shall commence New
2 Production of Groundwater from the Basin absent recommendation by the Watermaster Engineer
3 and approval by the Watermaster.

4 **18.5.13.4 Court Review.** Court review of a Watermaster decision on
5 a New Production application shall be pursuant to Paragraph 20.3.

6 **18.5.14 Storage Agreements.** The Watermaster shall adopt uniformly
7 applicable rules for Storage Agreements. The Watermaster Engineer shall calculate additions,
8 extractions and losses of water stored under Storage Agreements and maintain an Annual account
9 of all such water. Accounting done by the Watermaster Engineer under this Paragraph shall be
10 considered ministerial.

11 **18.5.15 Diversion of Storm Flow.** No Party may undertake or cause the
12 construction of any project within the Watershed of the Basin that will reduce the amount of
13 storm flows that would otherwise enter the Basin and contribute to the Native Safe Yield, without
14 prior notification to the Watermaster Engineer. The Watermaster Engineer may seek an
15 injunction or to otherwise impose restrictions or limitations on such project in order to prevent
16 reduction to Native Safe Yield. The Party sought to be enjoined or otherwise restricted or limited
17 is entitled to notice and an opportunity for the Party to respond prior to the imposition of any
18 restriction or limitation. Any Person may take emergency action as may be necessary to protect
19 the physical safety of its residents and personnel and its structures from flooding. Any such
20 action shall be done in a manner that will minimize any reduction in the quantity of Storm Flows.

21 **18.5.16 Data, Estimates and Procedures.** The Watermaster Engineer
22 shall rely on and use the best available science, records and data to support the implementation of
23 this Judgment. Where actual records of data are not available, the Watermaster Engineer shall
24 rely on and use sound scientific and engineering estimates. The Watermaster Engineer may use
25 preliminary records of measurements, and, if revisions are subsequently made, may reflect such
26 revisions in subsequent accounting.

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1 **18.5.17 Filing of Annual Report.** The Watermaster Engineer shall prepare
2 an Annual Report for filing with the Court not later than April 1 of each Year, beginning April 1
3 following the first full Year after entry of this Judgment. Prior to filing the Annual Report with
4 the Court, Watermaster shall notify all Parties that a draft of the Annual Report is available for
5 review by the Parties. Watermaster shall provide notice to all Parties of a public hearing to
6 receive comments and recommendations for changes in the Annual Report. The public hearing
7 shall be conducted pursuant to rules and regulations promulgated by the Watermaster. The notice
8 of public hearing may include such summary of the draft Annual Report as Watermaster may
9 deem appropriate. Watermaster shall distribute the Annual Report to any Parties requesting
10 copies.

11 **18.5.18 Annual Report to Court.** The Annual Report shall include an
12 Annual fiscal report of the preceding Year's operation; details regarding the operation of each of
13 the Subareas; an audit of all Assessments and expenditures; and a review of Watermaster
14 activities. The Annual Report shall include a compilation of at least the following:

- 15 **18.5.18.1 Replacement Obligations;**
- 16 **18.5.18.2 Hydrologic Data Collection;**
- 17 **18.5.18.3 Purchase and Recharge of Imported Water;**
- 18 **18.5.18.4 Notice List;**
- 19 **18.5.18.5 New Production Applications**
- 20 **18.5.18.6 Rules and Regulations;**
- 21 **18.5.18.7 Measuring Devices, etc;**
- 22 **18.5.18.8 Storage Agreements;**
- 23 **18.5.18.9 Annual Administrative Budget;**
- 24 **18.5.18.10 Transfers;**
- 25 **18.5.18.11 Production Reports;**
- 26 **18.5.18.12 Prior Year Report;**
- 27 **18.5.18.13 Amount of Stored Water owned by each Party;**

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- 1 **18.5.18.14** Amount of Stored Imported Water owned by each Party;
2 **18.5.18.15** Amount of unused Imported Water Return Flows owned by
3 each Party;
4 **18.5.18.16** Amount of Carry Over Water owned by each Party;
5 **18.5.18.17** All changes in use.

6 **18.6** **Recommendations of the Watermaster Engineer.** Unless otherwise
7 determined pursuant to Paragraph 18.1.2.2, all recommendations of the Watermaster Engineer
8 must be approved by unanimous vote of all members of the Watermaster. If there is not
9 unanimous vote among Watermaster members, Watermaster Engineer recommendations must be
10 presented to the Court for action and implementation.

11 **18.7** **Interim Approvals by the Court.** Until the Court approves rules and
12 regulations proposed by the Watermaster, the Court, upon noticed motion, may take or approve
13 any actions that the Watermaster or the Watermaster Engineer otherwise would be authorized to
14 take or approve under this Judgment.

15 **19.** **ADVISORY COMMITTEE**

16 **19.1** **Authorization.** The Producers are authorized and directed to cause a
17 committee of Producer representatives to be organized and to act as an Advisory Committee.

18 **19.2** **Compensation.** The Advisory Committee members shall serve without
19 compensation.

20 **19.3** **Powers and Functions.** The Advisory Committee shall act in an advisory
21 capacity only and shall have the duty to study, review, and make recommendations on all
22 discretionary determinations by Watermaster. Parties shall only provide input to the Watermaster
23 through the Advisory Committee.

24 **19.4** **Advisory Committee Meetings.** The Advisory Committee shall 1) meet
25 on a regular basis; 2) review Watermaster's activities pursuant to this Judgment on at least a
26 semi-annual basis; and 3) receive and make advisory recommendations to Watermaster.
27 Advisory Committee Meetings shall be open to all members of the public. Edwards Air Force
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Exhibit B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER
CASES

Included Actions:
Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Los Angeles, Case No.
BC 325201;

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co., Superior Court of
California, County of Kern, Case No. S-1500-
CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
County of Riverside, Case Nos. RIC 353 840,
RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

STATEMENT OF DECISION

STATEMENT OF DECISION

1 The Court; having considered the evidence and arguments of counsel, orally issued its
2 tentative decision on November 4, 2015 upon the conclusion of trial. For the reasons described in
3 further detail below, the Court now issues its Statement of Decision and hereby affirms and
4 confirms its previous statements of decision from earlier trial phases.

5 **I. INTRODUCTION**

6 Cross-complainants Los Angeles County Waterworks District No. 40, Palmdale Water
7 District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water
8 District, California Water Service Company, Rosamond Community Services District, Desert
9 Lake Community Services District, North Edwards Water District, City of Palmdale and City of
10 Lancaster (collectively, the "Public Water Suppliers") brought an action for, *inter alia*,
11 declaratory relief, alleging that the Antelope Valley Adjudication Area groundwater aquifer
12 ("Basin") was and is in a state of overdraft and requires a judicial intervention to provide for
13 water resource management within the Basin to prevent depletion of the aquifer and damage to
14 the Basin. They also seek a comprehensive adjudication of Basin groundwater rights for the
15 physical solution.

16 West Valley County Water District and Boron Community Services District are also
17 Public Water Suppliers but not cross-complainants.

18 Cross-defendants include the United States, numerous private landowners (collectively,
19 "Landowner Parties"), numerous public landowners ("Public Overliers"), Small Pumper Class,
20 other public water suppliers, and Phelan Piñon Hills Community Services District ("Phelan").
21 Small Pumper Class and Willis Class filed actions to adjudicate their respective groundwater
22 rights. All actions were coordinated and consolidated for all purposes.

23 The Court divided trial into phases. The first and second phases concerned the Basin
24 boundaries and the hydrogeological connectivity of certain areas within the Basin, respectively.
25 The third phase of trial determined that (1) the Basin was and has been in a state of overdraft
26 since at least 1951; and (2) that the total safe yield of the Basin is 110,000 acre feet per year
27 ("AFY"). The Court finds that the Basin's safe yield consists of 82,300 AFY of native or natural
28 yield and the remaining yield results from the augmentation of the Basin by parties' use of

1 imported supplemental water supplies, i.e., State Water Project water for urban, agricultural and
2 other reasonable and beneficial uses. The fourth phase of trial determined parties' groundwater
3 pumping for calendar years 2011 and 2012.

4 The fifth and sixth phases of trial included substantial evidence of the federal reserved
5 right held by the United States, evidence concerning Phelan's claimed groundwater rights, and
6 concluded with the Court's comprehensive adjudication of all parties' respective groundwater
7 rights in the Basin with a resulting physical solution to the Basin's chronic overdraft conditions.

8 This Statement of Decision contains the Court's findings as to the comprehensive
9 adjudication of all groundwater rights in the Basin including the groundwater rights of the United
10 States, Public Water Suppliers, Landowner Parties, Public Overliers, Small Pumper Class, Willis
11 Class, Phelan, Tapia Parties, defaulted parties, and parties who did not appear at trial. After
12 consideration as to all parties' respective groundwater rights and in recognition of those rights,
13 the Court approves the stipulation and physical solution presented as the [Proposed] Judgment
14 and Physical Solution (hereafter, "Judgment and Physical Solution" or "Physical Solution") in the
15 final phase of trial and adopts it as the Court's own physical solution.

16 **II. THESE COORDINATED AND CONSOLIDATED CASES ARE A**
17 **COMPREHENSIVE ADJUDICATION OF THE BASIN'S GROUNDWATER**
18 **RIGHTS**

19 The Court finds that these coordinated and consolidated cases are a comprehensive
20 adjudication of the Basin's groundwater rights under the McCarran Amendment (43 U.S.C. §666)
21 and California law. In order to effect jurisdiction over the United States under the McCarran
22 Amendment, a comprehensive or general adjudication must involve all claims to water from a
23 given source. (*Dugan v. Rank* (1963) 372 U.S. 609, 618-19; *Miller v. Jennings* (5th Cir. 1957)
24 243 F.2d 157, 159; *In re Snake River Basin Water System* (1988) 764 P.2d 78, 83.)

1 Here, all potential claimants to Basin groundwater have been joined. They have been
2 provided notice and an opportunity to be heard regarding their respective claims.

3 **III. THE UNITED STATES HAS A FEDERAL RESERVED WATER RIGHT TO**
4 **BASIN GROUNDWATER**

5 The Judgment and Physical Solution provide the United States with a Federal Reserved
6 Water Right of 7,600 AFY from the native safe yield for use for military purposes at Edwards Air
7 Force Base and Air Force Plant 42 (collectively, "Federal Lands.") The Federal Lands consist of
8 a combination of lands reserved from the public domain and acquired by transfer from public or
9 private sources. In the fifth phase of trial, the Court heard extensive evidence presented by the
10 United States as to its claimed rights to the Basin's groundwater. The Court finds such evidence
11 to be both substantial and credible and determines that the evidence presented is sufficient to
12 support that part of the Judgment and Physical Solution related to the United States' Federal
13 Reserved Water Right, including the allocation of 7600 AFY.

14 The federal reserved water rights doctrine provides that when the federal government
15 dedicates its lands for a particular purpose, it also reserves by implication, sufficient water
16 necessary to accomplish the purposes for which the land was reserved. (*See, United States v. New*
17 *Mexico* (1978) 438 U.S. 696; 715; *Cappaert v. United States* (1976) 426 U.S. 128, 138; *Arizona*
18 *v. California* (1963) 373 U.S. 546, 601; *Winters v. United States* (1908) 207 U.S. 564; *United*
19 *States v. Anderson* (9th Cir. 1984) 736 F.2d 1358.) The Federal Lands within the Basin are
20 dedicated to a military purpose, and that purpose by necessity requires water. Relevant to this
21 adjudication, the federal reserved water rights doctrine may apply to groundwater. (*In re the*
22 *General Adjudication of all Rights to Use Water in the Gila River Sys. and Source* (1999) 989
23 P.2d 739, 748.)

24 The evidence at trial established that the water use on the Federal Lands is necessary to
25 support the military purpose including water used for ancillary and supportive municipal,
26 industrial and domestic purposes. Further, water reserved for federal enclaves is intended to
27 satisfy the present and future water needs of the reservation. (*Arizona v California, supra*, 373
28 U.S. at p. 600.) The future water needs on the Federal Lands was supported by evidence and

1 expert witness testimony presented at trial that persuasively established the unique attributes of
2 the Federal Lands, their capacity for additional missions, and the trends within the Air Force and
3 military that make the Federal Lands a likely candidate for potential expansion of the mission.
4 The evidence presented at the fifth phase of trial was sufficient to establish facts necessary to
5 support that part of the Judgment and Physical Solution related to the recognition and
6 quantification of the United States' Federal Reserved Water Right.

7 **IV. CROSS-COMPLAINANT PUBLIC WATER SUPPLIERS HAVE PRESCRIPTIVE**
8 **RIGHTS**

9 Cross-complainant Public Water Suppliers sought an award of prescriptive rights against
10 the Tapia parties, defaulted parties, and parties who did not appear at trial. As explained below,
11 the Court finds that those Public Water Suppliers have established the requisite elements for their
12 respective prescriptive rights claims against these parties.

13 **A. Evidence of Adverse Use (Overdraft)**

14 "A prescriptive right in groundwater requires proof of the same elements required to prove
15 a prescriptive right in any other type of property: a continuous five years of use that is actual,
16 open and notorious, hostile and adverse to the original owner, and under claim of right. (*City of*
17 *Santa Maria v. Adam* (2012) 211 Cal.App.4th 266 (*Santa Maria*) citing *California Water Service*
18 *Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 726 (*California Water Service*)).

19 Because appropriators are entitled to the portion of the safe yield that is surplus to the
20 reasonable and beneficial uses of overlying landowners, "[t]he commencement of overdraft
21 provides the element of adversity which makes the first party's taking an invasion constituting a
22 basis for injunctive relief to the other party." (*Santa Maria, supra*, 211 Cal.App.4th at p. 291
23 quoting *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 282 (*San Fernando*).)
24 "The adversity element is satisfied by pumping whenever extractions exceed the safe yield."
25 (*Santa Maria, supra*, 211 Cal.App.4th at p. 292; see also *San Fernando, supra*, 14 Cal.3d at 278
26 and 282; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 903, 928-929 (*Pasadena*).)
27 This is because "appropriations of water in excess of surplus then invade senior basin rights,
28 creating the element of adversity against those rights prerequisite to their owners' becoming

1 entitled to an injunction and thus to the running of any prescriptive period against them.” (*San*
2 *Fernando, supra*, 14 Cal.3d at p. 278 citing *Pasadena, supra*, 33 Cal.2d at pp. 928-29].)
3 Undisputed evidence was submitted that the Cross-Complainant Public Water Suppliers’
4 production of water from the Basin has been hostile and adverse to the Tapia parties, defaulted
5 parties, and parties who did not appear at trial. Each Cross-Complainant Public Water Supplier
6 has pumped water from the Basin for at least five continuous years while the Basin was in
7 overdraft.

8 In the third phase of trial, the court took evidence on the physical manifestations of
9 overdraft and, finding substantial evidence thereof, concluded that there was Basin-wide
10 overdraft. The Court found that the overdraft conditions commenced by at least 1951 and
11 continue to the present. During this entire period, there was no groundwater surplus, temporary
12 or otherwise.¹

13 The evidence of historical overdraft—years when pumping exceeded the safe yield—is
14 credible, substantial and sufficient. There was voluminous evidence, both documentary and
15 testimonial, showing that extractions substantially exceeded the safe yield since at least the
16 1950’s. By the beginning of this century, the cumulative deficit was in the millions of acre-feet.

17 Here, the adversity element of prescription is satisfied by the various Cross-Complainant
18 Public Water Suppliers pumping groundwater when extractions exceeded the safe yield beginning
19 in the 1950’s and continuing to the present time. The Court finds that the evidence of Cross-
20 Complainant Public Water Supplier groundwater production in the Basin to be credible,
21 substantial and undisputed.

22 **B. Evidence of Notice**

23 “To perfect a prescriptive right the adverse use must be ‘open and notorious’ and ‘under
24 claim of right,’ which means that both the prior owner and the claimant must know that the
25 adverse use is occurring. In the groundwater context that requires evidence from which the court
26

27 ¹ There was no evidence of a temporary surplus condition. Overdraft commences when
28 groundwater extractions exceed the safe yield plus the volume of a temporary surplus. (*San*
Fernando, supra, 14 Cal.3d at 280.)

1 may fix the time at which the parties 'should reasonably be deemed to have received notice of the
2 commencement of overdraft.'" (*Santa Maria, supra*, 211 Cal.App.4th at p. 293 citing *San*
3 *Fernando, supra*, 14 Cal.3d at 283.) That can sometimes be difficult to prove. (*Santa Maria,*
4 *supra*, 211 Cal.App.4th at p. 291.) But that was not the case here.

5 The Court finds that the long-term, severe water shortage in the Basin was sufficient to
6 satisfy the element of notice to the Tapia parties, defaulted parties, and parties who did not appear
7 at trial. The Court finds that there is credible evidence that the Basin's chronically depleted water
8 levels within the Basin, and resulting land subsidence, were themselves well known. (See *Santa*
9 *Maria, supra*, 211 Cal.App.4th at p. 293 ["In this case, however, the long-term, severe water
10 shortage itself was enough to satisfy the element of notice.]) Undisputed evidence of notice was
11 presented including the long-standing and widespread chronic overdraft; the decline and
12 fluctuation in the water levels in the Basin aquifer; the resulting actions of state and local political
13 leaders; the public notoriety surrounding the need and the construction of the State Water Project;
14 the subsequent formation of the Antelope Valley East Kern Water Agency ("AVEK"); land
15 subsidence in portions of the Basin; the loss of irrigated agricultural lands as groundwater
16 conditions worsened; decades of published governmental reports on the chronic overdraft
17 conditions including land subsidence; operational problems at Edwards Air Force Base due to
18 land subsidence; and decades of extensive press accounts of the chronic overdraft conditions.

19 The Court heard credible expert witness testimony from Dr. Douglas Littlefield, a
20 recognized water rights historian. His opinion was supported by substantial documentary
21 evidence of the widespread information on overdraft conditions throughout the Basin since at
22 least 1945. Of particular note, the Los Angeles County Board of Supervisors enacted an
23 ordinance declaring the Antelope Valley groundwater basin to be in a state of overdraft in 1945.

24 The Court finds that there was abundant and continual evidence of actual and constructive
25 notice of the overdraft conditions going back to at least 1945. The numerous governmental
26 reports and newspaper accounts admitted into evidence are not hearsay because they are not
27 admissible for the truth of their contents. (Evid. Code, § 1200.) "The truth of the contents of the
28 documents, i.e., the truth of the assertion that the Basin was in overdraft, is not the point. Other

1 evidence proved that. The documents were offered to prove that the statements contained within
2 them were made. That is not hearsay but is original evidence." (*Santa Maria, supra*, 211
3 Cal.App.4th at p. 294 citing *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316.)

4 Here, the documents are evidence that public statements were made and actions taken by
5 local, state, and federal officials, demonstrating concern about depletion of the Basin's
6 groundwater supply. The notice evidence is substantial, credible and sufficient that the chronic
7 overdraft conditions were obvious to the Tapia parties, defaulted parties, and parties who did not
8 appear at trial. At the local level, AVEK was formed in the 1960's specifically to -bring State
9 Water Project water into the Basin as a response to persistent groundwater shortage problems.
10 These facts are sufficient to support the conclusion that the Tapia parties, defaulted parties, and
11 parties who did not appear at trial were on notice that the Basin was in overdraft.

12 C. Continuous 5 Years Use

13 Any continuous five-year adverse use period is sufficient to vest title in the adverse user,
14 even if the period does not immediately precede the filing of a complaint to establish the right.
15 (*Santa Maria, supra*, 211 Cal.App.4th at p. 266 [rejecting argument that prescription claim based
16 on actions taken over 30 years ago should be barred by laches]; *see Pasadena, supra*, 33 Cal.2d at
17 pp. 930-33 [upholding trial court's determination that a prescriptive right vested even though
18 pumping failed to meet the adversity requirement during two of the three years immediately
19 preceding the filing of the action]; *Lee v. Pacific Gas & Elec. Co.* (1936) 7 Cal.2d 114, 120.)

20 As to the prescriptive rights claims by each of the Cross-Complainant Public Water
21 Suppliers, the Court concludes that they have the burden of proof. The Court finds that the Public
22 Water Suppliers have met the burden of proof by undisputed evidence as to their following
23 prescriptive rights against the Tapia parties, defaulted parties, and parties who did not appear at
24 trial:

Public Water Supplier	Prescriptive Amount (AF)	Prescriptive Period
Los Angeles County Waterworks District No. 40	17,659.07	1995-1999
Palmdale Water District	8,297.91	2000-2004
Littlerock Creek Irrigation District	1,760	1996-2000
Quartz Hill Water District	1,413	1999-2003
Rosamond Community Services District	1,461.7	2000-2004
Palm Ranch Irrigation District	960	1973-1977
Desert Lake Community Services District	318	1973-1977
California Water Service Company	655	1998- 2002
North Edwards Water District	111.67	2000-2004

The above prescriptive amounts were established by evidence of each Public Water Supplier's respective groundwater production. Specifically, a five-year period with the lowest single year amount was used as the prescriptive right for each respective party's five-year period shown above.

The total prescriptive amount is greater than the amount of native water allocated to the Cross-Complainant Public Water Suppliers in the Judgment and Physical Solution. The Court finds that the amount of water allocated to the Cross-Complainant Public Water Suppliers is appropriate and reasonable, and does not unreasonably burden the groundwater rights of other parties. Additionally, West Valley County Water District and Boron Community Services District also pumped groundwater in quantities greater than their respective allocated amounts in the Judgment and Physical Solution, and their allocations are fair and reasonable in light of their

1 historical and existing reasonable and beneficial uses, and the significant and material reductions
2 thereto required by the Physical Solution.

3 **V. PHELAN DOES NOT HAVE AN APPROPRIATIVE RIGHT AND**
4 **VOLUNTARILY DISMISSED ITS PRESCRIPTIVE RIGHT CLAIM**

5 Phelan is also a public water supplier but it waived its prescriptive rights claim. Phelan
6 seeks a court-adjudicated right to pump groundwater from the Basin for use outside of the
7 Adjudication Area. For the reasons that follow, Phelan has no appropriative or any other right to
8 Basin groundwater.

9 Phelan's service area falls entirely within San Bernardino County and outside the
10 Adjudication Area. Phelan has one well within the Adjudication Area and several wells outside
11 the Adjudication Area. Phelan uses that well water to provide public water supply to Phelan
12 customers outside the Adjudication Area and within the adjacent Mojave Adjudication Area. In
13 this Court's Partial Statement of Decision for Trial Related to Phelan, the Court found that
14 "Phelan Piñon Hills does not have water rights to pump groundwater and export it from the
15 Adjudication Area or to an area for use other than on its property where Well 14 is located within
16 the adjudication area." (*Id.* at 6:19-21.) The Court makes this finding based on the following
17 facts: Phelan owns land in the Adjudication Area but the water pumped from the well is provided
18 to customers outside of the Adjudication Area (*Id.* at 7:3-6); the Basin has been in a state of
19 overdraft with no surplus water available for pumping for the entire duration of Phelan's pumping
20 (i.e., since at least 2005) (*Id.* at 4:9, 8:3-8); and the entire Basin, including the Butte sub-basin
21 where Phelan pumps, is hydrologically connected as a single aquifer. (*Id.* at 8:2-3, 16-22).

22 The Court further finds that Phelan's pumping of groundwater from the Basin negatively
23 impacts the Butte sub-basin. Phelan's expert witness, Mr. Tom Harder, testified that Phelan's
24 groundwater pumping deprives the Basin of natural recharge that would otherwise flow into the
25 Basin by taking water from the Adjudication Area for use within the Mojave Adjudication Area.

26 The Court finds that Phelan does not have return flow rights to groundwater in the Basin
27 because any right to return flow is limited to return flows from imported water and Phelan has
28 never imported water to the Basin (*Id.* at 9:3-10:6.); any groundwater flows generated from native

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1 water pumped by Phelan are intercepted by three groundwater wells operated by Phelan just
2 outside of the Adjudication Area; and the remaining flows that enter the Basin "merely 'lessen the
3 diminution occasioned' by Phelan's extraction and do not augment the [Basin's] groundwater
4 supply." (*Id.* at 10:7-11, 15-17, 23-25.)

5 In summary, Phelan claims an appropriative right to pump groundwater from the Basin.
6 The Court has found that there has been overdraft from the 1950's to the present time and there is
7 no surplus available for the acquisition or enlargement of appropriative rights by Phelan. Its
8 appropriations of Basin groundwater invade other parties' Basin rights. Phelan voluntarily
9 dismissed its prescriptive rights claim and thus has no right to pump groundwater from the Basin
10 except under the terms of the Court-approved Physical Solution herein.

11 **VI. STIPULATING LANDOWNER PARTIES AND PUBLIC OVERLIERS HAVE**
12 **ESTABLISHED THEIR OVERLYING RIGHTS TO THE BASIN'S NATIVE SAFE**
13 **YIELD**

14 Each stipulating Landowner Party and Public Overlier claims an overlying right to the
15 Basin's groundwater. They have proven their respective land ownership or other appropriate
16 interest in the Basin and reasonable use and established their overlying right. (*Santa Maria*,
17 *supra*, 211 Cal.App.4th at p. 298 citing *California Water Service, supra*, 224 Cal.App.2d at p.
18 725; *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 524-525
19 ("*Tulare*") [a trial court must determine whether overlying owners "considering all the needs of
20 those in the particular water field, are putting the waters to any reasonable beneficial uses, giving
21 consideration to all factors involved, including reasonable methods of use and reasonable
22 methods of diversion"].)

23 As explained below regarding the Physical Solution herein, the Court finds that it is
24 necessary to allocate the Basin's native safe yield to protect the Basin for all existing and future
25 users. The Court received evidence of each stipulating Landowner Party's, each Public Overlier's
26 and the Small Pumper Class's reasonable and beneficial use of Basin groundwater. "Evidence of
27 the quantity of a landowner's reasonable and beneficial use is necessary in many cases. . . . For
28 example, when it is alleged that the water supply is insufficient to satisfy all users the court must

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1 determine the quantity needed by those with overlying rights in order to determine whether there
2 is any surplus available for appropriation." (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 citing
3 *Tulare, supra*, 3 Cal.2d at p. 525.) "And it stands to reason that when there is a shortage, the
4 court must determine how much each of the overlying owners is using *in order to fairly allocate*
5 *the available supply among them.*" (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 [emphasis
6 added].)

7 Here, the Court heard evidence from four water engineers in the sixth phase of trial
8 regarding the stipulating Landowner Parties and Public Overliers' reasonable and beneficial uses
9 of water. Based on their credible and undisputed expert witness testimony, and substantial
10 evidence in the fourth and sixth phases of trial, the Court finds that each stipulating Landowner
11 Party and each Public Overlier has reasonably and beneficially used amounts of water which
12 collectively exceeded the total native safe yield; and the amounts allocated to each of these parties
13 under the Judgment and Physical Solution are reasonable and do not exceed the native safe yield.

14 The Court finds that the Landowner Parties and the Public Overliers will be required to
15 make severe reductions in their current and historical reasonable and beneficial water use under
16 the physical solution. The evidence further shows that the Basin's native safe yield alone is
17 insufficient to meet the reasonable and beneficial uses of all users, so the Court must allocate
18 quantities for each party's present use. The Court therefore finds that there is substantial
19 evidence that all allocations of groundwater in the Physical Solution herein and as stipulated by
20 the parties will effectively protect the Basin for existing and future users.

21 The Court further finds that the native safe yield allocations amongst the parties in the
22 Physical Solution make maximum reasonable and beneficial uses of the native safe yield under
23 the unique facts of this Basin, as required by the California Constitution, Article X, section 2.
24 The Court finds based on the credible testimony by water engineers Robert Beeby and Robert
25 Wagner that the Landowner Parties' and Public Overliers' allocated amounts are reasonable and
26 beneficial uses of water, and are significant reductions from their present and historical uses.

1 **VII. SUPPORTING LANDOWNER PARTIES – TRIAL STIPULATIONS**

2 On March 4, 2015, a large number of parties representing a majority of the total
3 groundwater production in the Basin (the “Stipulating Parties”) stipulated to the Proposed
4 Judgment and Physical Solution, which was subsequently amended on March 25, 2015. Since
5 March 25, 2015, a limited number of parties not signatory to, but supportive of, the Proposed
6 Judgment and Physical Solution (a “Supporting Landowner Party” or collectively, “Supporting
7 Landowner Parties”) asserted claims to produce groundwater from the Basin and executed
8 separate Trial Stipulations for Admission of Evidence by Non-Stipulating Parties and Waivers of
9 Procedural and Legal Obligations to Claims by Stipulating Parties Pursuant to Paragraph 5.1.10
10 of the Judgment and Physical Solution (“Trial Stipulations”) with the Stipulating Parties.

11 Under the Trial Stipulations, Supporting Landowner Parties agreed to reduce production
12 of groundwater under Paragraph 5.1.10 of the Judgment and Physical Solution to the following
13 amounts:

- 14 a. Desert Breeze MHP, LLC – 18.1 acre-feet per year;
15 b. Milana VII, LLC dba Rosamond Mobile Home Park – 21.7 acre-feet per year;
16 c. Reesdale Mutual Water Company – 23 acre-feet per year;
17 d. Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company.
18 – 12 acre-feet per year;
19 e. Clan Keith Real Estate Investments, LLC. dba Leisure Lake Mobile Estates – 64
20 acre-feet per year; and
21 f. White Fence Farms Mutual Water Co. No. 3 - 4 acre-feet per year.

22 g. LV Ritter Ranch, LLC - 0 acre-feet per year. h. Rebar Enterprises, Inc., Hi-Grade Materials, Co.,
and CTR, a General Partnership -
200 acre-feet per year.

23 Each Supporting Landowner Party has proven its respective land ownership or other appropriate
24 interest in the Basin, and its reasonable and beneficial use, and established its overlying right.
25 (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 citing *California Water Service, supra*, 224
26 Cal.App.2d at 725; *Tulare, supra*, 3 Cal.2d at p. 524.)

27 Here, the Court heard evidence from the Supporting Landowner Parties in the sixth phase
28 of trial. Based on the credible and undisputed evidence presented by the Supporting Landowner

1 Parties, the Court finds that there is substantial and credible evidence that each Supporting
2 Landowner Party has reasonably and beneficially used amounts of water. The Court finds that
3 the Supporting Landowner Parties will be required to make severe reductions in their current and
4 historical reasonable and beneficial water use under the Trial Stipulations and the Physical
5 Solution. The Court further finds that there is substantial evidence that all allocations of
6 groundwater in the Trial Stipulations and the Physical Solution will effectively protect the Basin
7 for existing and future users.

8 Therefore, based on the evidence submitted by the Supporting Landowner Parties, the
9 Court approves the Trial Stipulations executed by the Stipulating Parties and the Supporting
10 Landowner Parties and finds that the production rights agreed to therein are for reasonable and
11 beneficial uses.

12 **VIII. SMALL PUMPER CLASS SETTLEMENT AGREEMENT IS APPROVED**

13 The Small Pumper Class settlement agreement with the Public Water Suppliers which was
14 previously approved conditionally by the Court is hereby approved. The Court finds that the
15 agreement is fair, just, and beneficial to the Small Pumper Class members.

16 The Court finds the testimony by Mr. Thompson, the Court-appointed expert, to be
17 credible and undisputed regarding Small Pumper Class water use. The Court finds that the
18 average use of 1.2 AFY per parcel or household is reasonable, and is supported by Mr.
19 Thompson's report and testimony. Given the variation in Class Member water use for reasonable
20 and beneficial purposes, the same is true of individual Class Member use of up to 3 AFY. The
21 Court finds reasonable all other provisions in the proposed Judgment and Physical Solution that
22 impact or relate to the Small Pumper Class members rights or administration of those rights.

23 **IX. CHARLES TAPIA, AS AN INDIVIDUAL AND AS TRUSTEE OF NELLIE TAPIA**
24 **FAMILY TRUST**

25 Charles Tapia, as an individual and as trustee of Nellie Tapia Family Trust (collectively,
26 "Tapia Parties") failed to prove their groundwater use. The Court finds that the evidence and
27 testimony presented by the Tapia Parties was not credible in any way and that the evidence
28 presented by Tapia Parties was inherently contradictory. Consequently, the Court cannot make a

1 finding as to what amount of water was used on the Tapia Parties' land for reasonable and
2 beneficial use. Therefore, the Tapia Parties have failed to establish rights to groundwater
3 pumping based on the evidence and there is no statutory or equitable basis to give them an
4 allocation of water under the physical solution. The Tapia Parties will be subject to the
5 provisions of the Physical Solution.

6 **X. WILLIS CLASS**

7 The Willis Class members are property owners in the Basin who have never exercised
8 their overlying rights. Because the Willis Class objected to the Physical Solution, it is entitled to
9 have its rights tried as if there were no stipulated physical solution. (*Pasadena, supra*, 33 Cal.2d
10 at p. 924 ["Since the stipulation made by the other parties as to the reduction in pumping by each
11 is not binding upon appellant, it is necessary to determine appellant's rights in relation to the other
12 producers in the same manner as if there had been no agreement."]; *City of Barstow v. Mojave*
13 *Water Agency* (2000) 23 Cal.4th 1224, 1251-1252, 1256 (*Mojave*.)

14 In certain situations, as the Willis Class argues, unexercised overlying rights can be
15 exercised at any time, regardless of whether there has been any previous use. The Willis Class
16 concedes, however, the Court has authority to reasonably limit or burden the exercise of their
17 overlying rights. .

18 Here, despite the Willis Class' settlement with the Public Water Suppliers limiting the
19 impact of the prescriptive right, the Court finds multiple grounds to condition the unexercised
20 overlying rights of the Willis Class. Because the landowners' reasonable and beneficial use
21 pumping alone exceeded the native safe yield while public water supplier pumping was taking
22 place, the unexercised overlying rights of the Willis Class are not entitled to an allocation in the
23 Physical Solution. If that were not required under these circumstances in this Basin, the Court
24 finds that the pumping here by Landowner Parties, Public Overliers and the Small Pumper Class
25 would become legally meaningless because all unexercised overlying rights could eliminate long-
26 established overlying production.

27 Furthermore, the Willis Class settlement and Notice of Proposed Willis Class Action
28 Settlement and Settlement Hearing specifically state that the court will make a determination of

1 rights in the physical solution that will bind the Willis Class as part of the physical solution.
2 (Notice of Proposed Settlement at § 9 ["The Court is required to independently determine the
3 Basin's safe yield and other pertinent aspects of the Basin after hearing the relevant evidence, and
4 the Settling Parties will be bound by the Court's findings in that regard. In addition, the Parties
5 will be required to comply with the terms of any Physical Solution that may be imposed by the
6 Court to protect the Basin, and the Court will not be bound by the Settling Parties' agreements in
7 that regard."].)

8 As explained below concerning the Physical Solution herein, the Court finds that the
9 Basin requires badly needed certainty through quantifying all pumping rights, including overlying
10 rights. The Court finds that the Willis Class overlying rights cannot be quantified because they
11 have no present reasonable beneficial use; their future groundwater needs are speculative;
12 substantial evidence shows that the Basin's groundwater supply has been insufficient for decades;
13 and unexercised overlying rights create an unacceptable measure of uncertainty and risk of harm
14 to the public including Edwards Air Force Base, existing overlying pumpers and public water
15 supplier appropriators. This uncertainty and risk unreasonably inhibits critically-needed, long-
16 range planning and investment that is necessary to solve the overdraft conditions in this Basin.

17 The Court has heard evidence on all parties' water rights. The Court has considered these
18 water rights in relation to the reasonable use doctrine in Article X, section 2 of the California
19 Constitution. The Court finds that the unique aspects of this Basin explained below and its
20 chronic overdraft conditions prevent the Willis Class from having unrestricted overlying rights to
21 pump Basin groundwater.

22 The Court also finds an alternative basis for conditioning the Willis Class unexercised
23 overlying rights in Article X, section 2 of the California Constitution. The Court finds that
24 because of the circumstances existing in the Basin it would be unreasonable under the
25 Constitution to allow unexercised overlying rights holders to pump without the conditions
26 imposed by the Physical Solution. The Legislature has now recognized that unexercised overlying
27 rights holders may have conditions imposed upon them by a physical solution. (Assemb. Bill
28 1390, 2014-2015 Reg. Sess., ch.672, Code of Civil Procedure section 830, subdivision (b)(7),

1 [http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf)
2 [1400/ab_1390_bill_20151009_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf)" [http://www.leginfo.ca.gov/pub/15-](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf)
3 [16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf](http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf).)

4 Here, the Court must impose a physical solution that limits groundwater pumping to the
5 safe yield, protects the Basin long-term, and is fair and equitable to all parties. The Court's
6 Physical Solution meets these requirements. It severely reduces groundwater pumping, provides
7 management structure that will protect the Basin, balances the long-term groundwater supply and
8 demand, and limits future pumping by management rules that are fair, equitable, necessary and
9 equally applied to all overlying landowners.

10 The Court also notes that the Willis Class does not presently pump any groundwater and
11 thus, has no present reasonable and beneficial use of water. The Court finds it would be
12 unreasonable to require present users to further reduce their already severely reduced water use to
13 reserve a supply of water for non-users' speculative future use. Here, quantification of overlying
14 rights is necessary because there is a present need to allocate the native supply. Accordingly, the
15 Landowner Parties, Public Overliers and Small Pumper Class are entitled to continue their
16 significantly reduced production of the native or natural safe yield as set forth in the Physical
17 Solution. (*Santa Maria, supra*, 211 Cal.App.4th at p. 300.)

18 The Court finds that without reasonable conditions upon the exercise of an overlying right
19 in this overdrafted Basin, the Willis Class members' unrestricted right to exercise of the overlying
20 right during shortage conditions would make it impossible to manage and resolve the overdraft
21 conditions under the unique facts of this Basin and "[t]he law never requires impossibilities."
22 (Civ. Code, § 3531.) The Court therefore finds that the Willis Class members have an overlying
23 right that is to be exercised in accordance with the Physical Solution herein.

24 **XI. PARTIES WHO FAILED TO APPEAR AT TRIAL**

25 Parties who failed to appear at trial failed to meet their burden to produce evidence of
26 ownership, reasonable and beneficial use, and self-help. The Court finds that the Public Water
27 Suppliers have established their prescriptive rights claims as against these parties. They are
28

1 bound by the Physical Solution and their overlying rights are subject to the prescriptive rights of
2 the Public Water Suppliers.

3 **XII. PHYSICAL SOLUTION**

4 **A. Legal Standard**

5 “‘Physical solution’ is defined as an ‘equitable remedy designed to alleviate overdrafts
6 and the consequential depletion of water resources in a particular area, consistent with the
7 constitutional mandate to prevent waste and unreasonable water use and to maximize the
8 beneficial use of the state’s limited resource.’” (*Santa Maria, supra*, 211 Cal.App.4th at pp. 287-
9 288 quoting *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) A
10 court may use a physical solution to alleviate an overdraft situation. (*Ibid.*)

11 “‘[I]f a physical solution be ascertainable, the court has the power to make and should
12 make reasonable regulations for the use of the water by the respective parties, provided they be
13 adequate to protect the one having the paramount right in the substantial enjoyment thereof and to
14 prevent its ultimate destruction, and in this connection the court has the power to and should
15 reserve unto itself the right to change and modify its orders and decree as occasion may demand,
16 either on its own motion or on motion of any party.’” (*Santa Maria, supra*, 211 Cal.App.4th at p.
17 288 quoting *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383–384 (*Peabody*)). The California
18 Supreme Court has encouraged the trial courts “to be creative in devising physical solutions to
19 complex water problems to ensure a fair result consistent with the constitution’s reasonable-use
20 mandate.” (*Santa Maria, supra*, 211 Cal.App.4th at p. 288 citing *Tulare, supra*, 3 Cal.2d at 574.)

21 “‘So long as there is an ‘actual controversy,’ the trial court has the power to enter a
22 judgment declaring the rights of the parties (Code Civ. Proc., § 1060) and to impose a physical
23 solution where appropriate (*City of Lodi v. East Bay Mun. Dist.* (1936) 7 Cal.2d 316, 341
24 (“*Lodi*”). ‘Each case must turn on its own facts, and the power of the court extends to working
25 out a fair and just solution, if one can be worked out, of those facts.’” (*Rancho Santa Margarita v.*
26 *Vail* (1938) 11 Cal.2d 501, 560–561 (“*Vail*”).) . . . [T]he court not only has the power but the
27 duty to fashion a solution to insure the reasonable and beneficial use of the state’s water resources
28 as required by article X, section 2. (*Lodi, supra*, at 341.) The only restriction is that, absent the

1 party's consent, a physical solution may not adversely affect that party's existing water rights.
2 (Cf. *Mojave*, *supra*, 23 Cal.4th at pp. 1243–1244, 1250–1251.) (*Santa Maria*, *supra*, 211
3 Cal.App.4th at p. 288.) Pursuant to this duty a trial court is obliged to consider a physical
4 solution “when it can be done without substantial damage to the existing rights of others.”
5 (*Peabody*, *supra*, 2 Cal.2d at p. 373.)

6 A trial court has broad authority to use its equitable powers to fashion a physical solution.
7 (*Mojave*, *supra*, 23 Cal.4th at p. 1249; *Santa Maria*, *supra*, 211 Cal.App.4th at p. 288 [“Each case
8 must turn on its own facts, and the power of the court extends to working out a fair and just
9 solution”] [quoting *Vail*, *supra*, 11 Cal.2d at pp 560-61].) The physical solution, however, must
10 carry out the mandates of Article X, Section 2 of the California Constitution, including the
11 mandate that the state’s water resources be put to “beneficial use to *the fullest extent of which they*
12 *are capable.*” (*Lodi*, *supra*, 7 Cal.2d at p. 340 [emphasis added] quoting Cal.Const., art. XIV, §
13 3.) In addition, while a physical solution may permit the modification of existing water uses
14 practices, it may not allow waste. (*Pasadena*, *supra*, 33 Cal.2d at pp. 948-949 [Physical solution
15 should “avoid [] waste, ... at the same time not unreasonably and adversely affect the prior
16 appropriator's vested property right.”] [emphasis added in original]; *Lodi*, *supra*, 7 Cal.2d at 341
17 [“Although the prior appropriator may be required to make minor changes in its method of
18 appropriation in order to render available water for subsequent appropriators, it cannot be
19 compelled to make major changes or to incur substantial expense.”] citing *Peabody*, *supra*, 2
20 Cal.2d at p. 376.)

21 Here, the Court finds that because the Basin is and has been so severely overdrafted and
22 contains so much undeveloped land that existing pumping must be limited and constraints on new
23 pumping are required in the Physical Solution to protect the Basin, Edwards AFB and the public
24 at large. Accordingly, the Court finds that water allocations and reasonable conditions on new
25 pumping are required in the Physical Solution.

26 Factors that weigh into the reasonableness of water allocations in a physical solution
27 include actual use (*Tulare*, *supra*, 3 Cal.2d at 565), whether use has been reasonable and
28

1 beneficial (*id.* at 526); and the effect of the use on the basin and overall water supply. (*Lodi*,
2 *supra*, 7 Cal.2d at pp. 344-345.)

3 **B. A Physical Solution Is Required Now**

4 The Court finds that a physical solution with an allocation of water rights is required now.
5 The Basin has been in a state of overdraft since at least 1951. (Statement of Decision Phase
6 Three Trial, pp. 5:17-6:28 ("Phase 3 Decision"); Partial Statement of Decision for Trial Related
7 to Phelan Piñon Hills Community Services District (2nd and 6th Causes of Action), p. 4, fn. 1.)
8 In the phase three trial, the Court determined that the Basin has a safe yield of 110,000 AFY,
9 consisting of a native safe yield of 82,300 AFY and return flows. (Phase 3 Decision at 9:27-28;
10 see also Supplemental Request for Judicial Notice, posted on the Court's website on January 24,
11 2014 ("Supplemental RJN"), Ex. II, at 30:8-31:4.). The Court finds that groundwater production
12 has exceeded this native and total safe yield and continues to exceed this safe yield causing harm
13 to the Basin. (Phase 3 Decision at 6:18-27, 7:24-26.)

14 **C. The Physical Solution Is Unique Because Each Basin Is Unique**

15 The Court finds that there are facts which necessarily make the Physical Solution here
16 unique and different from any other groundwater basin's physical solution.

17 The Basin encompasses more than 1,000 square miles of desert land. It is one of the driest
18 locations in California. The Basin is mostly recharged by nearby mountain front runoff as well as
19 lesser amounts of recharge from use of State Water Project water. While drought conditions
20 impact California, they are particularly harmful to the Basin because it has limited surface stream
21 supplies, and no coastal desalination facilities or other significant natural sources of supply
22 (except for mountain front recharge).

23 The largest landowner is the United States which operates Edwards Air Force Base
24 ("Edwards AFB") and other facilities in the Antelope Valley such as the "Plant 42" site. The
25 federal facilities including Edwards AFB provide strategic national defense and aerospace
26 capabilities and are critical to the local economy including the cities of Palmdale and Lancaster.
27 Testimony by the United States establishes that Edwards AFB is unique amongst the federal
28

1 military bases because it has and continues to conduct test flights and aerospace operations that
2 cannot be conducted elsewhere.

3 Due to its location within the Basin, Edwards AFB has been and continues to be
4 particularly prone to chronic lowering of local groundwater levels and land subsidence which is
5 caused by groundwater pumping throughout the Basin. The Court received substantial evidence
6 concerning the land subsidence in and around Edwards AFB.

7 The Court finds that there must be a physical solution which stops the overdraft conditions
8 in and around Edwards AFB and that protects it from the future exercise of overlying rights that
9 would exacerbate the existing overdraft or cause it anew. The Court finds that parties cannot
10 continue to exercise their overlying rights in an unregulated manner because that will continue to
11 harm the Basin and, in particular, Edwards AFB. The Court finds that the Physical Solution here
12 allows for the reasonable exercise of overlying rights by all parties in a manner that will protect
13 the operations at Edwards AFB and the rest of the Basin for all parties.

14 The Court finds that the current cost of supplemental State Water Project water from
15 AVEK is approximately \$310 per acre foot – even in today's severe drought conditions. The
16 Court finds that the cost of supplemental State Water Project water is approximately \$26 a month
17 (i.e., \$310 to \$312 AFY) that the cost for an acre foot of water is less than what most Californians
18 would pay for their household water needs. The Court finds that it is fair, reasonable and
19 beneficial for the Willis Class members to pay for the cost of replacement water from AVEK if a
20 Class member should decide to exercise its overlying right by installing a groundwater well and
21 using its water for reasonable and beneficial uses. The Court further finds that the Physical
22 Solution provides that the Water Master has discretion to allow a Willis Class member to pump
23 groundwater without having to pay any replacement assessment in certain circumstances.

24 **D. The Court Uses Its Independent Judgment To Adopt The Physical Solution**

25 A large number of parties representing a majority of the total groundwater production in
26 the Basin ("Stipulating Parties") have stipulated to the Physical Solution. The Court, however,
27 uses its own independent judgment and discretion to approve the Physical Solution here; the
28

1 Court adopts the Physical Solution as its own physical solution for the Basin after it determined
2 and considered the parties' respective groundwater rights.

3 **E. All Parties Are Bound By The Physical Solution**

4 The Willis Class challenges the Physical Solution's allocation of native safe yield to those
5 who exercise and have exercised their overlying rights. All present and historical users of the
6 Basin's overdrafted groundwater supply have a legally protected interest in the native yield after
7 their sustaining severe restrictions that will be imposed by the Physical Solution to decades-long
8 water shortage conditions. The Willis Class interest in the long term health of the Basin is the
9 same as every other overlying user of groundwater; there is no conflict between the Willis Class
10 and the other parties in the Physical Solution. And the Court's continuing jurisdiction protects the
11 Willis Class from the possibility that a future exercise of the overlying right by any party could
12 adversely affect them.

13 The Willis Class asks to not be bound by the Physical Solution. The Willis Class argues
14 that they cannot be bound by provisions they did not agree to, but the Court finds otherwise. "[I]t
15 should be kept in mind that the equity court is not bound or limited by the suggestions or offers
16 made by the parties to this, or any similar, action.' The court 'undoubtedly has the power
17 regardless of whether the parties have suggested the particular physical solution or not, to make
18 its injunctive order subject to conditions which it may suggest . . .'" (*Santa Maria, supra*, 211
19 Cal.App.4th at p. 290 quoting *Tulare, supra*, 3 Cal.2d at 574.) The Court finds that to protect the
20 Basin it is necessary that all parties participate and be bound by the groundwater management
21 provisions of the Physical Solution.

22 **F. The Physical Solution Protects the Basin by Preventing Future Overdraft**

23 The Physical Solution will protect all water rights in the Basin by preventing future
24 overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land
25 subsidence. (See *Lodi, supra*, 7 Cal.2d at 344-45.) Dr. Williams testified that pumping at
26 existing levels will continue to degrade and cause undesirable results in the Basin, but that the
27 Physical Solution will bring the Basin into balance and stop undesirable results including land
28

1 subsidence. The ramp-down of groundwater production set forth in the Physical Solution will
2 bring pumping in the Basin within its safe yield.

3 Furthermore, the Physical Solution is likely to lead to additional importation of water into
4 the Basin and thus additional return flows which will help to restore groundwater levels in the
5 Basin in two ways. First, if existing groundwater users exceed their respective allocations, they
6 will pay a replacement assessment that will be used to bring additional imported water into the
7 Basin. Second, because allocations are capped at the total yield of the Basin, new production,
8 whether by existing pumpers or new pumpers will result in importation of additional
9 supplemental water into the Basin. Finally, the Physical Solution allows parties to store water in
10 the Basin which will improve water levels. The Court further finds that the carryover and transfer
11 provisions in the Judgment and Physical Solution are reasonable and beneficial, and are essential
12 in the management of the Basin.

13 Dr. Williams testified as to what will happen to groundwater levels if current pumping
14 levels continue without a physical solution, compared to scenarios in which parties pump in
15 accordance with the Physical Solution. His testimony showed that water level decline and
16 subsidence risk will decrease under the Physical Solution. In the absence of a physical solution,
17 he testified, subsidence will continue to be a problem. This credible and undisputed testimony
18 demonstrates that management by the Physical Solution is necessary to sustain groundwater
19 levels and protect future use of entitlements in the Basin.

20 The Court finds that the Basin's safe yield, together with available supplemental supplies,
21 are sufficient to meet current water demands. This confirms further that the Physical Solution will
22 work for this Basin

23 **G. The Physical Solution Reasonably Treats All Overlying Rights**

24 The Court finds that each party is treated reasonably by the Physical Solution; the priority
25 of rights in the Basin is preserved; no vested rights are eliminated; and allocations are reasonably
26 tied to reasonable and beneficial use and the health of the Basin. (See *Lodi, supra*, 7 Cal.2d at
27 341; *Mojave, supra*, 23 Cal.4th at p. 1250; *Pasadena, supra*, 33 Cal.2d at pp. 948-949.)

1 1) Federal Reserved Rights

2 The United States has a right to produce 7,600 AFY from the native safe yield as a federal
3 reserved water right for use for military purposes at Edwards Air Force Base and Air Force Plant
4 42. (See *United States v. New Mexico*, *supra*, 438 U.S. at p. 700; *Cappaert v. United States*,
5 *supra*, 426 U.S. at p. 138.) The Physical Solution preserves the United States' right to produce
6 7,600 AFY at any time for uses consistent with the federal reserved water right, and shields the
7 United States' water right from the ramp down and pro-rata reduction due to overdraft. (Physical
8 Solution, ¶5.1.4.) When the United States does not take its allocation, the Physical Solution
9 provides for certain parties who have cut back their present water use to use that water consistent
10 with the Constitutional mandate of Article X, Section 2 to put the water to its fullest use..

11 2) Small Pumper Class

12 Small Pumper Class members are allocated up to and including 3 AFY per existing
13 household for reasonable and beneficial use on their overlying land, with the known Small
14 Pumper Class members' aggregate use of native supply limited to 3,806.4 AFY. A Small Pumper
15 Class member taking more than 3 AFY is subject to a replacement water assessment. (Physical
16 Solution, ¶5.1.3.) The Court has already admitted evidence regarding the Small Pumper Class'
17 use of water by the Court-appointed expert, Tim Thompson.

18 3) Overlying Landowner Parties and Public Overliers

19 The Physical Solution allocates approximately 82 percent of the adjusted native safe yield
20 to the Landowner Parties and Public Overliers. (Physical Solution section 5.1.5, Ex. 4.) The
21 allocation is fair and reasonable in light of their historical and existing reasonable and beneficial
22 uses, and the significant and material reductions thereto required by the Physical Solution.

23 4) Unknown Existing Pumpers

24 The Physical Solution provides for the allocation of groundwater to unknown *existing*
25 pumpers that prove their respective entitlement to water rights in the future. (Physical Solution,
26 ¶¶5.1.10, 18.5.13.) Such allocations will not result in continuing overdraft, as the Physical
27 Solution provides for the Water Master to adjust allocations or take other action necessary to
28 prevent overdraft. (*Id.* at ¶18.5.13.2.) The Court finds that the Physical Solution approved herein

1 provides sufficient flexibility to the Court and the Water Master so that the Physical Solution is
2 implemented fairly and reasonably as to any unknown existing users.

3 5) Return Flows From Imported Water

4 Return flow rights exist with respect to foreign water brought into the Basin, the use of
5 which augments the Basin's groundwater. (*City of Los Angeles v. City of Glendale* (1943) 23
6 Cal.2d 68, 76-78; *San Fernando, supra*, 14 Cal.3d at pp. 257-259, 262-263; *Santa Maria, supra*,
7 211 Cal.App.4th at p. 301.) Return flows are calculated by multiplying the quantity of water
8 imported and used in the Basin by a percentage representing the portion of that water that is
9 expected to augment the aquifer. (*Ibid.*) Paragraph 18.5.11 provides the Water Master with
10 flexibility to adjust the return flow percentages in the seventeenth year. The Court finds that the
11 right to return flows from imported State Water Project water is properly allocated as set forth in
12 paragraph 5.2 and Exhibit 8 of the Judgment and Physical Solution.

13 6) Phelan

14 The Physical Solution permits Phelan to pump up to 1,200 AFY from the Basin and
15 deliver the pumped water outside of the Basin for use in the Phelan service area if that amount of
16 water is available without causing material injury and provided that Phelan pays a replacement
17 water assessment. (Physical Solution, ¶6.4.1.2.) This allocation and the correlating assessment
18 are fair and reasonable in light of findings made by the Court.

19 7) Defaulted Parties and Parties That Did Not Appear At Trial

20 Defaulting parties and parties who did not appear at trial failed to meet their burden to
21 produce evidence of ownership, reasonable and beneficial use, and self-help. They are bound by
22 the Physical Solution and their overlying rights, if any, are subject to the prescriptive rights of the
23 Public Water Suppliers.

24 ~~8) Robar Enterprises, Inc., Hi-Grade Materials Co., CJR, a general~~
25 ~~partnership.~~

26 ~~The Court has severed Robar Enterprises, Inc., Hi-Grade Materials Co., CJR, a general~~
27 ~~partnership (collectively, "Robar") from the trial and retains jurisdiction over Robar's~~
28 ~~groundwater rights claim.~~

1 H. The Physical Solution Is Consistent With the Willis Class Settlement
2 Agreement

3 The Public Water Suppliers entered into a Stipulation of Settlement with the Willis Class
4 ("Willis Class Stipulation" or "Stipulation") which was approved by the Court on September 22,
5 2011. As the Court has already recognized, the Stipulation—which was only between the Willis
6 Class and the Public Water Suppliers—did not and cannot establish a water rights determination
7 binding upon all parties in these proceedings. (Order after November 18, 2010 Hearing ["the
8 court determination of physical solution cannot be limited by the [Stipulation]"; the Stipulation
9 "may not affect parties who are not parties to the [Stipulation]"].) Rather, water rights must be
10 determined by the Court as part of a comprehensive physical solution to the Basin's chronic
11 overdraft condition. Indeed, the Willis Class acknowledged in the Stipulation that the ultimate
12 determination of its reasonable correlative right would depend upon the existing and historical
13 pumping of all other overlying landowners in the Basin. (Stipulation, ¶IV.D.3.) While the
14 Stipulation recognized that the Willis Class members may receive whatever is later to be
15 determined by the Court as their reasonable correlative right to the Basin's native safe yield for
16 actual reasonable and beneficial uses, it could do nothing more. *Nothing in the Decision,*
17 *Judgment, or Physical Solution, alters the agreed-upon allocations between*
18 *The Court finds that the Physical Solution is consistent with the Willis Class Stipulation*
19 *for at least the following reasons:*
20 1) The Willis Class Stipulation recognizes that there would be Court-imposed *Class,*
21 limits on the Willis Class' correlative share of overlying rights because the *on that relation-*
22 Basin is and has been in an overdraft condition for decades; *has no impact*
23 2) No member of the Willis Class has established any present right to produce *on the Court's duty*
24 groundwater for reasonable and beneficial use based on their unexercised *to*
25 overlying claim; and *impose a*
26 3) The Physical Solution recognizes the Willis Class' share of correlative *Physical Solution*
27 overlying rights and does not unreasonably burden its members' rights *that protects the*
28 given the significant reductions in groundwater pumping and increased *Basin.*
29 expense incurred by the Stipulating Parties in the Physical Solution. At

- 25 -

STATEMENT OF DECISION

1 this time, more than the entire native safe yield is being applied to
2 reasonable and beneficial uses.

3 In the Willis Class Stipulation, the Willis Class also agreed that a Court-imposed physical
4 solution may require the installation of a meter on any groundwater pump by a Willis Class
5 member (Willis Class Stipulation at ¶V.B. at 11:28-12:7) and that Willis Class member
6 production from the Basin above its allocated share in a physical solution would require the
7 member to import replacement water or pay a replacement assessment (*Id.* at ¶IV.D. at 12:19-26).
8 The requirements set forth in Paragraphs 9.2 and 9.2.1 of the Physical Solution are thus consistent
9 with the Willis Class Stipulation.

10 I. The Physical Solution Does Not Unreasonably Affect the Willis Class

11 As overlying landowners in an overdrafted basin, the members of the Willis Class are
12 entitled to a fair and just proportion of the water available to overlying landowners, i.e., a
13 correlative right. (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 136; see also Willis Class
14 Stipulation, ¶III.D at 5:26-6:2.) The Willis Class members, however, have never exercised their
15 rights to produce groundwater from the Basin. Recognizing this fact, the Physical Solution does
16 not provide for an allocation to the Willis Class, but preserves their ability to pump groundwater
17 in the future. This right cannot be unrestricted, however, due to the unique aspects of this Basin,
18 its long-standing overdraft conditions, and the significant reductions in groundwater use by
19 parties who have relied and continue to rely upon the Basin for a sustainable groundwater supply.

20 Here, the Court must fashion a physical solution that limits groundwater pumping to the
21 safe yield, protects the Basin long-term, and is fair and equitable to all parties. Willis Class
22 members will have the opportunity to prove a claim of right to the Court (Physical Solution,
23 ¶5.1.10) or, like all other pumpers in the Basin, apply to the Water Master for new groundwater
24 production. (¶18.5.13). Thus, the Willis Class' correlative rights are more than fairly protected
25 by the Physical Solution.

26 As discussed above, to the extent the Court finds that a replacement water assessment is
27 necessary the Court finds it is reasonable. Significantly, the assessment is consistent with the
28 Willis Class Stipulation in which the Willis Class agreed to pay a replacement assessment if a

1 member produced "more than its annual share" of the native safe yield less the amount of the
2 federal reserved right. In addition, the replacement assessment is imposed uniformly on all
3 existing producers in the Basin that produce more than their available allocation in any given
4 year. (Physical Solution, ¶9.2.)

5 In today's unprecedented drought conditions with the cost of water rising, a replacement
6 assessment for an acre foot of water would be approximately \$310. Assuming an acre foot of
7 water is sufficient for domestic use in the Antelope Valley as testified by the court-appointed
8 expert, Tim Thompson, the average monthly cost for a Willis Class member would be a mere \$26
9 – a monthly amount less than what most Californians are likely paying for that amount of water.
10 The Court finds that the replacement assessment is not an unreasonable burden upon any Willis
11 Class member who may someday install a well for domestic use.

12 But even the small amount of replacement assessment cost can be avoided under the
13 Physical Solution if the Water master determines that the particular Willis Class member's
14 domestic use will not harm the Basin or other groundwater users. There is no reasonable basis for
15 any argument that a replacement assessment somehow unreasonably burdens or significantly
16 harms a Willis Class member who might have to pay a relatively small amount for a relatively
17 large amount of water.

18 **J. The Willis Class' Due Process Rights Are Not Violated**

19 The Court finds that the Physical Solution does not "extinguish" the water rights of the
20 Willis Class, as the Willis Class claims. Rather, the Physical Solution allows Willis Class
21 members—who have never put their overlying rights to reasonable and beneficial use - to prove
22 their entitlement to a Production Right to the Court or apply as a new pumper to the Water
23 master. (Physical Solution, ¶¶5.1.10 & 18.5.13.) The Willis Class had notice and an opportunity
24 to present evidence on this and all other issues determined by the Court.

25 The Court finds that the Willis Class received adequate notice that the Court would adopt
26 a physical solution that could restrict or place conditions on the Willis Class members' ability to
27 pump groundwater. Due process protects parties from "arbitrary adjudicative procedures." (*Ryan*
28 *v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1070.)


1 No such risk exists here because the Court-approved notice to the Willis Class, put them on notice
2 that they would be subject to a physical solution yet to be approved by the Court. The notice
3 stated that the Willis Class members "will be bound by the terms of any later findings made by
4 the Court and any Physical Solution imposed by the Court" and "it is likely that there will be
5 limits imposed on the amount of pumping in the near future." (Notice of Proposed Settlement at
6 §§ 9 & 17.)

7 The Willis Class has actively participated in these proceedings since January 11, 2007,
8 knows that the other Landowner Parties and Public Overliers claim a correlative share of the
9 Basin's native safe yield, and agreed in the Willis Class Stipulation that they would be subject to
10 the Court's future jurisdiction and judgment and be bound by a physical solution.

11 **XIII. CONCLUSION**

12 The Court finds that the Physical Solution is required and appropriate under the unique
13 facts of the Basin. The Physical Solution resolves all groundwater issues in the Basin and
14 provides for a sustainable groundwater supply for all parties now and in the future. The Physical
15 Solution addresses all parties' rights to produce and store groundwater in the Basin while
16 furthering the mandates of the State Constitution and the water policy of the State of California.
17 The Court finds that the Physical Solution is reasonable, fair and beneficial as to all parties, and
18 serves the public interest.

19
20
21 Dated: December 23 2015


JUDGE OF THE SUPERIOR COURT

22
23
24
25 26345.00000231413163

Exhibit C

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 354 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

**ORDER AFTER HEARINGS ON
JANUARY 31, 2018: (1) Antelope
Valley Watermaster's Motion for
Order Interpreting the Judgment
Regarding Pre-Rampdown
Production and Carry Over Water
Rights; (2) LACWD 40's Motion
Under Sections 6.5 of the Physical
Solution for Interpretation of
Judgment Confirming Applicability of
Rampdown and Carryover Rights to
Public Water Suppliers**

Judge: Honorable Jack Komar, Ret.

1 **This Document Pertains to Add-On Case:**

2 Little Rock Sand and Gravel, Inc., a California
3 corporation v. Granite Construction Company
4 Superior Court of California
County of Los Angeles, Case No. MC026932
5

6 The above-entitled matters came on regularly for hearing on January 31, 2018 at 9:00
7 a.m. in the Superior Court of California, County of Los Angeles, Room 222, the Honorable
8 Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having
9 read and considered the supporting and opposing papers, and having heard and considered the
10 arguments of counsel, and good cause appearing therefore, makes the following order:

11 The parties have filed, briefed and noticed for hearing three separate but related post
12 judgment motions requesting an interpretation of provisions of the stipulated judgment in this
13 matter.

14 All three of the motions in one form or other essentially address the same issue:
15 whether the provisions of Section 8.3 of the Judgment and Stipulation apply to only the parties
16 listed in Exhibit 4 to the Judgment or whether certain other parties also are accorded the benefit
17 of the limitations on imposition of the Replacement Water Assessments during the rampdown
18 period.¹

19 Thus, the issue is whether the during the years three through seven, commencing
20 January 1, 2018, if the public water producers reduce pumping in equal annual increments
21 until each reaches the production rights set forth in Exhibit 3 to the Judgment at the conclusion
22 of the ramp down period, December 31, 2023 may the Watermaster assess replacement water
23 charges pursuant to Section 9.2 for the difference between the post-rampdown production
24 right and the amount actually pumped or may the public water producers pump an annually
25 reduced amount for those five years paying only if they exceed the reduced quantity for the
26 year.

27
28 ¹ All references to "sections" are to the sections in the judgment unless otherwise noted.

1 The court has read and considered the moving and opposing briefs, heard oral
2 argument, and ordered the matters submitted.

3
4 1. **Antelope Valley Watermaster's Motion for Order Interpreting the Judgment**
5 **Regarding Pre-Rampdown Production and Carry Over Water Rights**

6 "The Watermaster" which was created pursuant to the stipulation and judgment
7 entered herein has filed a motion under the provisions of Section 6.5 of the Judgment
8 requesting that the court clarify whether certain parties to the judgment are entitled to the
9 benefits of the provisions of Section 8.3 which limits water replacement assessments during the
10 Section 8.2 rampdown period.

11 There is objection by certain Public Water Supplier parties to the standing of the
12 Watermaster to file its motion. The objection to the Watermaster's standing to bring this
13 motion is overruled.

14 The Watermaster is an entity established in conformity to the Judgment herein to
15 administer the physical solution created by the judgment. The Watermaster is comprised of an
16 elected representative board which employs an executive officer and technical and
17 administrative staff. It is in effect an arm of the court created by the court to manage the
18 physical solution to the aquifer overdraft.

19 The Watermaster is charged with developing administrative rules and to monitor and
20 carry out the provisions of the Judgment and the physical solution.

21 Section 18 et seq. of the judgment specifies that the Watermaster has the duty to
22 prepare rules for the monitoring and development of the physical solution and enforcement of
23 the judgment. Section 18.7 provides for application to the court and authorizes the court to take
24 or approve any actions that the Watermaster would be authorized to take or approve under the
25 judgment.

26 The Watermaster Board is in the process of developing and approving rules to
27 administer the physical solution as required by the judgment and can only act upon a
28 unanimous vote. The Watermaster Board is divided on the issue of the application of

1 certain portions of the judgment relating to the rampdown provisions during the first seven
2 years following the entry of judgment. Thus, the Watermaster requests that the court rule on
3 whether it must apply the Section 8.3 exemption to the public water producers for the five year
4 period commencing January 1, 2018.

5 Summarizing the Watermaster Motion, the issue presented by the Watermaster is
6 whether the parties listed in Exhibit 3 to the Judgment but not listed in Exhibit 4 to the
7 Judgment, and not otherwise included or excluded, are entitled to the benefit of Section 8.3 of
8 the Judgment for the period between January 1, 2018 and December 31, 2023.

9 Judgment Section 5.1.1 et seq. refers to Exhibit 4, which lists all stipulating overlying
10 producing owners with pre-rampdown and post-rampdown production quantifications.

11 Judgment Section 5.1.6 provides for Non Overlying Production Rights: The public
12 water supplier parties listed in Exhibit three have production rights in the agreed to amounts
13 listed in the exhibit but there is no specification of pre-judgment water production
14 quantifications.

15 It is noted that Section 8.3 does not contain references to either Sections 5.1.1 et seq.,
16 5.1.6, or either Exhibits 3 or 4.

17 Counsel for the Watermaster has provided an objective, neutral analysis of the issue
18 and has requested the court to determine which position it should follow.

19 The Watermaster board must unanimously adopt a rule regarding these issues to enable
20 it to administer the physical solution.

21
22 **2. LACWD 40's Motion Under Sections 6.5 of the Physical Solution for**
23 **Interpretation of Judgment Confirming Applicability of Rampdown and**
24 **Carryover Rights to Public Water Suppliers**

25 The Public Water Producers, non-overlying water producers, have also filed a motion
26 requesting the court to interpret the-rampdown provisions of the judgment. The issue presented
27 is essentially the same as the issue presented by the Watermaster, namely, whether the parties
28 who are listed in Exhibit Three to the judgment are entitled to the benefit of Section 8.3 of the

1 judgment permitting them to reduce their water production over a period described as the
2 "rampdown period" without paying a replacement water assessment each year under the
3 provisions of Section 9.2, as they gradually reduce their water production to the stipulated
4 entitlement. Of course, any production over the annual reduced right would be subject to such
5 assessment, subject to Section 8.4 (Drought Conditions).

6 In addition, these Public Water Producer parties have also requested and then
7 withdrawn a request to interpret certain "carry-over" provisions provided for in the judgment.
8 That request will not be considered because it has been withdrawn.

9 A Motion has also been filed by Clan Keith Real Estate Investments, LLC (hereinafter
10 Clan Keith), a party who did not stipulate to the judgment but who is a "supporting party" and
11 bound by the terms of the judgment. Clan Keith is, an overlying land owner doing business as
12 Leisure Lake Mobile Estates, requesting the benefit of the provisions of Sections 8.2 and 8.3.

13 Essentially, all of the above motions are in the form of declaratory relief. The water
14 producers and Clan Keith cannot pump water from the aquifer without knowing what the
15 replacement water obligations are and the board cannot prepare rules implementing the
16 physical solution without the court's interpretation of the terms of the judgment. The issues are
17 ripe for decision.

18 The question requires interpretation of the stipulated agreement between the parties and
19 the court's judgment. All parties contend that the stipulation and judgment is clear on its face.
20 No party has offered parol or extrinsic evidence to interpret the stipulation or the judgment.

21 The Judgment signed on December 23, 2016 and entered thereafter adopted and
22 incorporated into its terms a "physical solution" to remedy a severe overdraft situation in the
23 Antelope Valley adjudication area. The physical solution was stipulated to by the vast majority
24 of parties to this coordinated proceeding.

25 In seeking approval of the stipulation and proposed judgment the parties to the
26 stipulation offered evidence and argument to justify and support the stipulation.

27 The court made independent findings based on the evidence submitted and found that
28 the then stipulated proposed physical solution was an effective mechanism to stop the overdraft

1 and restore the aquifer to health, adopting the stipulation in its entirety and incorporating it into
2 the judgment, thereby binding all stipulating and non-stipulating parties to its terms.

3 Based upon the testimony of experts offered without objection, or contradiction, the
4 court found that the then proposed physical solution, which included a gradual reduction of
5 pumping by a large number of water producers in the valley, both overlying owners and public
6 water producers, over a period of seven years would result in a reduction of pumping within
7 the aquifer to an amount not exceeding the safe yield after the seventh year following the
8 judgment, thereby preventing further overdraft and restoring the balance to the aquifer in the
9 Antelope Valley adjudication area.

10 The purpose of the expert testimony was clearly understood by the parties. A counsel
11 for the Public Water Suppliers stated on the record in advance of the testimony: "(expert) has
12 developed a model which can be used to show over time how the physical solution will impact
13 the basin. And it should come as no surprise that we are offering this to show that in fact it is a
14 physical solution."

15 Counsel for a Landowner Party also commented on the record in advance of that expert
16 testimony that "none of the land owner parties are objecting to that (expert testimony) beyond
17 reserving the right to challenge a model, if necessary, in the future, to have contribution to a
18 model in the future, to have a model in the future vetted which will be used for purposes of . . .
19 which will be the ultimate model that is used."

20 The experts' testimony evaluated the methodology of the proposed physical solution
21 and the stipulation, which included a production ramp down of pumping for all parties on
22 Exhibits 3 and 4 as an implementation of the physical solution over the 7 year period. The
23 expert opinions included both the Exhibit 3 Public Water Suppliers as well as the Exhibit 4
24 overlying land owners in the application of the Section 8.3 provisions for the seven year ramp
25 down period.

26 The expert opinions were based on the provisions of the stipulation and court's
27 previous phase statements of decision, subject to the specifics in the proposed judgment and
28 the stipulation. The testimony provided justification for the efficacy of the physical solution,