

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.

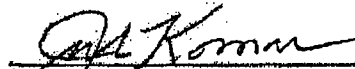
22 No party is penalized if the Public Water Suppliers also have the advantage of the
23 rampdown period. If the Public Water Providers are accorded the five year progressive
24 reduction right, there is no effect whatsoever upon any other party in the case. It neither
25 increases their costs nor affects 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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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

On April 4, 2018, I served the foregoing document described **WATERMASTER'S OPPOSITION TO PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S MOTION FOR DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND WATER MASTER RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016 AND 2017; DECLARATION OF CRAIG A. PARTON; EXHIBITS A-C** on all interested parties in this action by placing the original and/or true copy.

☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara County Superior Court Website @ www.scefiling.org and Glotrans website in the action of the Antelope Valley Groundwater Cases.

☒ *(STATE)* I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ *(FEDERAL)* I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on April 4, 2018, at Santa Barbara, California.



Signature
Elizabeth Wright

TAB 3

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8 Palmdale Water District

EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE § 6103

FILED
Superior Court of California
County of Los Angeles

APR 05 2018

Sherri B. Carter, Executive Officer/Clerk
By Marion Gomez Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

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

JCCP 4408
Judicial Council Coordination
Proceeding No. 4408

13 **ANTELOPE VALLEY GROUNDWATER**
14 **CASES**

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

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

15 **Joinder of Palmdale Water District in**
16 **Watermaster's Opposition to Phelan Piñon**
17 **Hills Community Services District's Motion for**
18 **Declaratory Relief Re Judgment Entered**
19 **December 23, 2015 and Watermaster**
20 **Resolution No. R-18-04 Regarding**
21 **Replacement Water Assessments for 2016 and**
22 **2017; Declaration of Craig A. Parton; Exhibits**
23 **A-C**

24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 Palmdale Water District hereby joins in the **Opposition to Phelan Piñon Hills Community**
26 **Services District's Motion for Declaratory Relief** filed by the Antelope Valley Watermaster.

27 Dated: April 4, 2018

Lagerlof, Senecal, Gosney & Kruse LLP

28 By: Thomas S. Bunn III

Thomas S. Bunn III

Attorneys for Palmdale Water District

TAB 4

COPY

EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE SECTION 6103

CONFORMED COPY
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Superior Court of California
County of Los Angeles

APR 05 2018

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By: Maricela Gonzalez, Deputy

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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
*Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40, et al.*, Superior Court
of California, County of Los Angeles, Case No.
BC364533

*Richard Wood v. Los Angeles County Waterworks
District No. 40, et al.*, Superior Court of California,
County of Los Angeles, Case No. BC391869

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

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

**WATER SUPPLIERS' OPPOSITION
TO PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT'S MOTION FOR
DECLARATORY RELIEF RE
JUDGMENT ENTERED
DECEMBER 23, 2015 AND
WATERMASTER RESOLUTION
NO. R-18-04 RE REPLACEMENT
WATER ASSESSMENTS FOR 2016
AND 2017; DECLARATION OF
WENDY Y. WANG**

Hearing: April 18, 2018
Time: 9:00 a.m.
Dept.: Room 222 (Stanley Mosk)

FILED

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After considering evidence concerning Phelan Piñon Hills Community Services District's ("Phelan") pumping and the resulting harm to the Antelope Valley Adjudication Area ("Adjudication Area" or "Basin"), this Court concluded that Phelan "has no right to pump groundwater from the Basin except under terms of the Court-approved Physical Solution." (Declaration of Wendy Wang ("Wang Decl."), Ex. "B" at 10:9-10.) As an exporter of water, Phelan has no right to pump groundwater in the Adjudication Area. (*Id.* at 9:7-8.) Nonetheless, the Physical Solution carves out a narrow exception allowing Phelan to pump and export water from the Adjudication Area provided that: (1) its pumping does not cause "Material Injury"¹; and (2) Phelan pays replacement assessments and all other costs necessary to protect other parties' production rights. (Motion, Ex. 3 [Physical Solution], §6.4.1.2.) Phelan's motion now seeks to remove these clear and unequivocal conditions for its exportation of water in 2016 and 2017.

For the reasons stated herein, the Los Angeles County Waterworks District No. 40 ("District No. 40"), Palmdale Water District, Rosamond Community Services District, Quartz Hill Water District, Littlerock Creek Irrigation District, and Palm Ranch Irrigation District ("Water Suppliers") oppose Phelan's motion.

I. PHELAN'S EXPORTATION OF GROUNDWATER HARMS THE BASIN

Phelan does not pump any groundwater for use within the Adjudication Area. All of the water pumped by Phelan is exported from the Basin.² Uncontroverted evidence introduced by Phelan during the 2014 trial on its water rights demonstrates "that Phelan's pumping of groundwater from Basin negatively impacts the Butte sub-basin. . . [, and] deprives the Basin of natural recharge that would otherwise flow into the Basin by taking water from the Adjudication Area for use within the Mojave Adjudication Area." (Wang Decl., Ex. "B" at 9:22-3.) The Court found that because the Butte sub-basin (where Phelan's Well 14 is located) recharges the

¹ Capitalized terms not otherwise defined herein shall have the same meaning as provided in the court-adopted Physical Solution.

² "Phelan's service area falls entirely within San Bernardino County and outside the Adjudication Area. Phelan has one well within the Adjudication Area and several wells outside the Adjudication Area. Phelan uses that well water to provide public water supply to Phelan customers outside the Adjudication Area and within the adjacent Mojave Adjudication Area." (Wang Decl., Ex. "B" at 9:9-21.)

1 Lancaster sub-basin (which lies within the Adjudication Area), Phelan’s pumping could lower
2 groundwater level in the Adjudication Area. (Wang Decl., Ex. “A” at 10:21-23.) Moreover,
3 Phelan’s “operation of its three groundwater wells located near Well 14 [but outside of the
4 Adjudication Area] intercepts groundwater that would otherwise flow into and recharge the
5 Adjudication Area.” (*Id.* at 10:23-25.)

6 Based on evidence introduced by Phelan’s own expert, Mr. Tom Harder, it is inarguable
7 that Phelan’s pumping harms the Basin and that any pumping of water by Phelan that is not
8 mitigated via replacement water funded by a replacement water assessment will harm the Basin.

9 **II. SECTION 6.4 OF THE PHYSICAL SOLUTION PROVIDES THE ONLY**
10 **MECHANISM UNDER WHICH PHELAN CAN PUMP GROUNDWATER FROM**
11 **THE BASIN**

12 Section 6.4 of the Physical Solution enjoins “each and every Party” from transporting
13 Groundwater from the Basin to areas outside the Basin. However, Section 6.4.1.2 creates a very
14 limited exception to the injunction for Phelan. Section 6.4.1.2 provides that the injunction does
15 not apply to “any Groundwater Produced within the Basin by [Phelan] and delivered to its service
16 areas, so long as the total Production does not exceed 1,200 acre feet per Year, such water is
17 available for Production without causing Material Injury, and the District pays a Replacement
18 Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to
19 protect Production Rights decreed herein”

20 This narrow exception is the only mechanism under the Physical Solution that allows
21 Phelan to pump any groundwater. By carving out this exception, the Court expressly required
22 Phelan to pay a Replacement Water Assessment. Because the specific language providing the
23 only exception for Phelan to pump groundwater mandates that Phelan pay a Replacement Water
24 Assessment to pump that water, Phelan cannot now evade the Replacement Water Assessment.

25 **III. PHELAN HAS NO LEGALLY COGNIZABLE WATER RIGHT TO PUMP**
26 **WATER FROM THE BASIN AND THE PHYSICAL SOLUTION’S DEFINITION**
27 **OF “PRODUCER” DOES NOT CREATE SUCH RIGHT**

28 As set forth in the Statement of Decision, “Phelan has no appropriative right or any other

1 right to Basin groundwater.” (Wang Decl., Ex. “B” at 9:7-8.) Despite this, Phelan now relies on
2 Section 3.5.30 of the Physical Solution to claim that it has a right to pump and export
3 groundwater for free during the first two years of the Rampdown Period. Section 3.5.30 defines
4 “Producer” as a “Party who Produces Groundwater.” The term “Produce” is defined as: “To
5 pump Groundwater for existing and future reasonable beneficial uses.” (Physical Solution,
6 §3.5.29.) The purpose of the Rampdown Period and the Rampdown provision is to allow a Party
7 to gradually reduce its pumping “from its Pre-Rampdown Production to its Production Right.”
8 (Physical Solution, §8.3 [emphasis added].) “Production Right” is the “amount of Native Safe
9 Yield that may be Produced each Year free of any Replacement Water Assessment and
10 Replacement Obligation. The total of the Production Rights decreed in this Judgment equals the
11 Native Safe Yield.” (*Id.*, §3.5.32.)

12 Implicit in the definitions of “Produce” and “Producer” and the Rampdown provision is
13 that to “Produce” groundwater during the Rampdown Period a party must have a water right.
14 This Court has already determined that Phelan does not have a water right. In fact, in direct
15 response to Phelan’s request for “a court-adjudicated right to pump groundwater from the Basin
16 for use outside of the Adjudication Area,” the Court specifically found that Phelan did not have
17 any such right. (Wang Decl., Ex. “B” at 9:5-8.) As such, Phelan is not and cannot be a
18 “Producer” under Sections 3.5.30 and 8 of the Physical Solution.

19 If the Court were to adopt Phelan’s interpretation of Sections 3.5.30 and 8 and include
20 within the definition of “Producers” parties without a present water right, there would be nothing
21 to prevent the tens of thousands of parties in this action who have never pumped groundwater
22 from the Basin from drilling a well and pumping Groundwater free of a Replacement Water
23 Assessment for two years. To adopt Phelan’s interpretation would create pumping rights where
24 none exists.

25 Pursuant to the Physical Solution, any Production that is “not of right” as of the entry of
26 the Judgment is a “New Production” that must comply with Section 18.5.13 of the Physical
27 Solution, which requires a new application to be submitted to the Watermaster. As the Physical
28 Solution does not provide Phelan a Production Right (rather it merely exempts Phelan from the

injunction against exportation under limited circumstances), Phelan is not and cannot be a “Producer” for the purposes of the Rampdown provision.

IV. CONCLUSION

For the foregoing reasons, Phelan’s motion should be denied.

Dated: April 5, 2018

BEST BEST & KRIEGER LLP

By: 

ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for LOS ANGELES COUNTY
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Dated: April 5, 2018

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DESERT LAKE COMMUNITY
SERVICES DISTRICT, NORTH
EDWARDS WATER DISTRICT, LLANO
DEL RIO WATER COMPANY, LLANO
MUTUAL WATER COMPANY, BIG
ROCK MUTUAL WATER COMPANY,
AND QUARTZ HILL WATER
DISTRICT

Dated: April 5, 2018

MURPHY & EVERTZ LLP

By: /s/ Douglas J. Evertz

DOUGLAS J. EVERTZ
Attorneys for CITY OF LANCASTER
AND ROSAMOND COMMUNITY
SERVICES DISTRICT

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Dated: April 5, 2018

LAGERLOF SENECA GOSNEY & KRUSE

By: /s/ Thomas Bunn III
THOMAS BUNN III
Attorneys for PALMDALE WATER
DISTRICT

DECLARATION OF WENDY Y. WANG

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am one of the attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached hereto as Exhibit "A" is a true and correct copy of the Partial Statement of Decision for Trial Related to Phelan Piñon Hills Community Services District (2nd and 6th Causes of Action), dated February 3, 2015, and issued after the November 4, 2014 trial on Phelan's causes of action.

4. Attached hereto as Exhibit "B" is a true and correct copy of the Statement of Decision, dated December 23, 2015, and issued after the Phase 6 trial.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of April, 2018 at Los Angeles, CA.

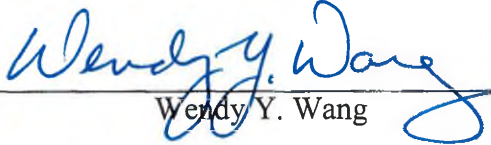

Wendy Y. Wang

EXHIBIT A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

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

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**PARTIAL STATEMENT OF
DECISION FOR TRIAL RELATED
TO PHELAN PIÑON HILLS
COMMUNITY SERVICES
DISTRICT (2ND AND 6TH CAUSES
OF ACTION)**

Trial: November 4, 2014

Judge: Honorable Jack Komar, Ret.

1 Cross-Complainant Phelan Piñon Hills Community Services District's ("Phelan Piñon
2 Hills") second and sixth causes of action for a declaration of its appropriative and return flow
3 rights, respectively, came on regularly for trial before this court commencing on November 4,
4 2014, in Department 56 of the Los Angeles County Superior Court, the Honorable Jack Komar
5 presiding. During trial, Phelan Piñon Hills presented percipient and expert witnesses,
6 documentary evidence, and a Stipulation of agreed upon facts.

7 After Phelan Piñon Hills completed its presentation of evidence, the following Cross-
8 Defendants jointly moved for judgment pursuant to section 631.8 of the Code of Civil Procedure:
9 Los Angeles County Waterworks District No. 40, Palmdale Water District, Littlerock Creek
10 Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District,
11 North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company,
12 and Big Rock Mutual Water Company, the State of California, the City of Los Angeles, Tejon
13 Ranchcorp, Tejon Ranch Company, and Granite Construction Company (collectively, "Phelan
14 Cross-Defendants").
15

16 The court, having considered the evidence and arguments of counsel, orally issued its
17 tentative decision granting the motion for judgment on November 5, 2014 in favor of the Phelan
18 Cross-Defendants. For the reasons described in further detail below, the Court now issues its
19 Statement of Decision and finds that the cross defendants are entitled to judgment in their favor
20 on the Phelan Piñon Hills' second and sixth cause of action.

21 Phelan Piñon Hills has filed its written request for findings of fact and conclusions of law
22 on numerous issues. Only those issues that are determinative of the outcome of this proceeding
23 are addressed in this Statement of Decision.

24 The standard for a statement of decision as set forth in Code of Civil Procedure section
25 632 requires a court to explain " ... the legal and factual basis for its decision as to each of the
26 principal contraverted issues at trial. ... "Case law is clear that a court must provide the factual
27 and legal basis for the decision on those issues only closely related to the ultimate issues on the
28 case. (See *People v. CasaBlanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It

1 is also clear that a court need not respond to requests that are in the nature of "interrogatories."
2 (See *id.* at pp. 525-526.)

3 The principal issues at this phase of the trial were to determine if the Phelan Piñon Hills
4 Community Service Area was entitled to an appropriator's right to produce water from a well
5 located in the Antelope Valley Ground Water Adjudication Area (Second Cause of Action of its
6 Cross Complaint) and whether it had a right to return flows created by the return of water from
7 its use in areas outside the adjudication area but within the aquifer boundaries (6th Cause of
8 Action).

9 In order to establish a right to the reasonable and beneficial production of water from an
10 aquifer in an adjudication area, the claimant must establish rights defined as either overlying
11 rights, appropriative rights from surplus water, or prescriptive rights. If the aquifer is in a state of
12 overdraft and there is no surplus because annual recharge is less than extraction, an overlying
13 owner is entitled only to a *correlative* right to produce water for reasonable and beneficial uses
14 on the owner's property, subject to all other correlative rights. Such a party cannot pump more
15 than the reasonable and beneficial amount needed for the owned land from which the water is
16 pumped and would be a wrongful appropriator for any excess amounts or exported water and
17 would be subject to injunctive or other relief.

18 The boundaries of the Antelope Valley Adjudication Area (the Adjudication Area)
19 consist of an area overlying and coextensive with the aquifer which were determined by the court
20 in the Phase One trial in these coordinated proceedings. A small area which overlies the aquifer
21 in the south east corner was excluded from the Adjudication Area because it is within the Mojave
22 Adjudication Area and under the jurisdiction of the Mojave County Superior Court Ground
23 Water adjudication, although as the evidence later established, disconnected from the Mojave
24 Aquifer.

25 In the Second Phase of trial in these coordinated proceedings, the Antelope Valley
26 Adjudication area was found to contain a single aquifer and while there are variations in water
27 level within the various subareas (sub basins), there is hydraulic connectivity and conductivity
28 with all parts of the several sub basins within the adjudication area aquifer.

1 In the Third Phase of Trial in these coordinated proceedings, the court found that the
2 entire aquifer was in a state of over draft since prior to 2005¹ and suffering degradation and
3 detriment of a permanent nature as a result of extractions exceeding annual recharge over many
4 years both preceding and after 2005.

5 Phelan filed its Cross Complaint in these proceedings and sought relief in Eight Causes of
6 Action. The Second Cause of Action sought to establish “an appropriative right for public use to
7 pump groundwater from the Adjudication area” from Well # 14 to its service area which is
8 outside the adjudication area.

9 Phelan Piñon Hills Community Services District (Phelan) owns Well # 14 which it
10 acquired and from which it began producing water in 2005. The well is located in the Antelope
11 Valley Adjudication Area but none of the water produced is directly used within the Antelope
12 Valley Ground Water Adjudication area. The water is pumped to and used in the Phelan Service
13 area for use by residents in the service area, an area outside the Adjudication area.

14
15
16 **1. GENERAL FINDINGS OF FACT**

17 The Court finds that the following facts were established by the evidence, including
18 testimony of witnesses, documentary evidence, and the parties’ stipulation of facts, as follows
19 below.

20 Phelan Piñon Hills is a California community services district. It was formed on March
21 18, 2008. It provides public water service within its service area which is entirely within San
22 Bernardino County.

23 As part of its formation, Phelan Piñon Hills acquired a parcel of land within Los Angeles
24 County (“Well 14 Parcel”). The Well 14 Parcel is not within the Phelan Piñon Hills service area.

25 The Well 14 Parcel has an operating groundwater well, which is commonly referred to as
26
27

28

¹ The evidence at the Third Phase of Trial established that the Antelope Valley Basin was in a state of overdraft from 1951 through 2005.

1 Phelan Piñon Hills' "Well 14." Well 14 Parcel is within the Antelope Valley Adjudication Area
2 ("Adjudication Area") as determined by this Court's order, dated March 12, 2007

3 A part of Phelan Piñon Hills' service area overlies a portion of the Antelope Valley
4 Groundwater Basin as described and shown in California Department of Water Resources
5 Bulletin 118 (2003). That portion of the Phelan Piñon Hills' service area is within the existing
6 Mojave Basin Adjudication Area in San Bernardino County. It is outside of the Antelope Valley
7 Adjudication Area. Although the south-eastern boundary of the Antelope Valley Adjudication
8 Area is the county line between San Bernardino and Los Angeles Counties, the portion of the
9 Antelope Valley Groundwater Basin located in San Bernardino County is hydrologically
10 connected to the Antelope Valley Adjudication Area in Los Angeles County.
11

12 **2. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

13 Prior to Phelan Piñon Hills' formation a community services district, a predecessor
14 agency had installed Well 14 on the Well 14 Parcel in 2004. Well 14's groundwater production
15 is as follows:

16 2004 and earlier: none;

17 2005 (beginning in September): 1.11 acre feet ("af");

18 2006: 164.15 af;

19 2007: 20.95 af;

20 2008: 493.27 af;

21 2009: 558.65 af;

22 2010: 1,110.45 af;

23 2011: 1,053.14 af;

24 2012: 1,035.26 af; and

25 2013: 1,028 af.

26 Phelan Piñon Hills pumps groundwater for municipal uses from a number of wells
27 including Well 14. Well 14 is the only Phelan Piñon Hills well outside the Phelan Piñon Hills
28 service area.

1 Phelan Piñon Hills does not import water from the State Water Project or from any other
2 source. But Phelan Piñon Hills claims a right to “return flows” from Well 14. Phelan Piñon
3 Hills contends that some amount of the groundwater produced from Well 14 is used by Phelan
4 Piñon Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan
5 Piñon characterizes the recharge as “return flows.” The Phelan Piñon Hills’ groundwater
6 production from Well 14 during the years from 2010 to 2013 exceeds the average amount of the
7 Phelan Piñon Hills claimed “return flows” during that same period.

8 Well 14 is located in an area of the Adjudication Area generally known as the Butte
9 subbasin, which borders the Lancaster subbasin to the west. The Butte sub basin and the
10 Lancaster sub basin physically adjacent and are hydrologically connected. Groundwater
11 pumping in a sub basin can lower the groundwater level in an adjacent sub basin.
12

13 Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are
14 within one mile of Well 14. These three wells are located within the Antelope Valley
15 Groundwater Basin, but outside of the Adjudication Area. These three wells intercept
16 groundwater that would otherwise flow into and recharge the Adjudication Area.

17 **A. Phelan Piñon Hills’ Second Cause of Action for a Declaration of Its**
18 **Appropriative Rights**

19 The Court finds and determines that the Phelan Piñon Hills does not have water rights to
20 pump groundwater and export it from the Adjudication Area to an area for use other than on its
21 property where Well 14 is located within the adjudication area. All of its pumping from the
22 inception from Well 14 is used on other than the property from which it is pumped. While it is
23 entitled to use the water from Well 14 on its land within the adjudication area, so long as there is
24 no surplus within the Adjudication Area aquifer, it is an appropriator without a right to pump.
25 There was no credible testimony or evidence to the contrary.

26 **1. *The factual and legal basis for the Court's decision is as follows:***

27 Under California law, “[a]ny water not needed for the reasonable beneficial use of those
28 having prior rights is excess or surplus water and may rightly be appropriated on privately owned

1 land for non-overlying use” so long as the basin is not in overdraft. (*City of Barstow v. Mojave*
2 *Water Agency* (2000) 23 Cal.4th 1224, 1241 (“*Mojave Water Agency*”) [citing *California Water*
3 *Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan
4 Piñon Hills owns land in the Adjudication Area, it does not use the water it pumps from Well 14
5 on its land within the Adjudication Area. Instead, Phelan Piñon Hills provides such water to its
6 customers outside of the Adjudication Area and not on its own property.

7 To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to
8 establish that the water it pumped from the Antelope Valley Adjudication Area is *surplus* water,
9 that the aquifer from which it is pumped is not in overdraft, and that its use is reasonable and
10 beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241 (“*Mojave*
11 *Water Agency*”); *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926 (“*Pasadena*”);
12 *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, 293 (“*San Fernando*”);
13 *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481; *City of Santa Maria v. Adam*
14 (2012) 211 Cal.App.4th 266, 279 (“*Santa Maria*”).)

15 The California Supreme Court has explained the concepts of surplus water and overdraft
16 in a groundwater basin:
17

18 A ground basin is in a state of surplus when the amount of water
19 being extracted from it is less than the maximum that could be
20 withdrawn without adverse effects on the basin's long term supply.
21 While this state of surplus exists, none of the extractions from the
22 basin for beneficial use constitutes such an invasion of any water
23 right as will entitle the owner of the right to injunctive, as distinct
24 from declaratory, relief. (*City of Pasadena v. City of Alhambra*,
25 *supra*, 33 Cal.2d at pp. 926-927; *City of Los Angeles v. City of*
Glendale, supra, 23 Cal.2d at p. 79.) Overdraft commences
whenever extractions increase, or the withdrawable maximum
decreases, or both, to the point where the surplus ends. **Thus on**
the commencement of overdraft there is no surplus available
for the acquisition or enlargement of appropriative rights.

26 (*San Fernando, supra*, 14 Cal.3d at pp. 277-78 [emphasis added].)
27
28

1 This Court has already determined, after considering extensive oral and documentary
2 evidence and hearing arguments, that there is hydraulic connectivity within the entire
3 Adjudication Area, that the Adjudication Area has sustained a significant loss of groundwater
4 since 1951, that the Adjudication Area has been in a state of overdraft since at least 2005 and
5 that no surplus water has been available for pumping at least since then. (Statement of
6 Decision, Phase 3 Trial (Jul. 18, 2011) at 5:17–6:4, 5:15–5:22, and 9:4–9:11.) Phelan Piñon
7 Hills presented no evidence to the contrary. Hence, the Adjudication Area had no surplus
8 water for Phelan Piñon Hills to pump since at least 2005.

9 Phelan Piñon Hills argues that surplus water exists in the Butte subbasin where Well 14
10 is located. In support of its contention, Phelan Piñon Hills offered testimony by Mr. Harder
11 that the groundwater levels in the Butte subbasin remain relatively the same since the 1950's
12 and there is no land subsidence in the Butte subbasin. Mr. Harder's testimony, however, does
13 not contradict the Court's finding in Phase 3 that the Adjudication Area is in overdraft and no
14 surplus water exists.

15 The Court has found that all areas of the Antelope Valley Adjudication Area
16 hydrologically connected and a part of a single groundwater aquifer: "The Court defined the
17 boundaries of the valley aquifer based upon evidence of hydro-connection within the aquifer. If
18 there was no hydro-connectivity with the aquifer, an area was excluded from the adjudication."
19 (Statement of Decision, Phase 3 Trial (Jul. 18, 2011) at p. 5.) This finding is consistent with
20 Mr. Harder's testimony that the Butte sub basin is hydrologically connected to the Lancaster
21 sub basin and that groundwater from the Butte sub basin recharges the adjudication aquifer.

22 Thus, it is not surprising that the overall overdraft condition would impact the Butte sub
23 basin differently than it impacts the Lancaster sub basin. Uneven impact from groundwater
24 pumping is not an indication that an overdraft condition does not exist or that surplus water
25 exists. The Court finds that groundwater pumping in the Butte subbasin negatively impacts
26 groundwater recharge in the Lancaster subbasin and that Phelan Piñon Hills failed to meet its
27 burden of proof that surplus water exists within the Adjudication Area.
28

1 **B. Phelan Piñon Hills' Sixth Cause of Action for a Declaration of Its Return**
2 **Flow Rights**

3 The Court finds and determines that Phelan Piñon Hills does not have return flows rights
4 to groundwater in the Adjudication Area. There was no credible testimony or evidence offered
5 by Phelan Piñon Hills to the contrary.

6 The right to return flows is limited to return flows from imported water. In *San*
7 *Fernando, supra*, the California Supreme Court rejected a party's claim to a return flow right
8 from native water, stating:

9
10 Even though all deliveries produce a return flow, only deliveries
11 derived from imported water add to the ground supply. The
12 purpose of giving the right to recapture returns from delivered
13 imported water priority over overlying rights and rights based on
14 appropriations of the native ground supply is to credit the importer
15 with the fruits of his expenditures and endeavors in bringing into
16 the basin water that would not otherwise be there. Returns from
17 deliveries of extracted native water do not add to the ground
18 supply but only lessen the diminution occasioned by the
19 extractions.

20 (*San Fernando, supra*, 14 Cal.3d at p. 261.) The policy behind granting an importer the return
21 flow right is to award the importer with the fruit of its labor. (*Santa Maria, supra*, 211
22 Cal.App.4th at p. 301 ["[O]ne who brings water into a watershed may retain a prior right to it
23 even after it is used. . . . The practical reason for the rule is that the importer should be credited
24 with the 'fruits ... of his endeavors in bringing into the basin water that would not otherwise be
25 there.'"] [citations omitted].)

26 Phelan Piñon Hills asked the Court to adopt the doctrine of recapture as applied in a
27 federal court litigation between Montana and Wyoming, in lieu of California law on return flow
28 rights as set forth in *San Fernando* and *Santa Maria*. (See *Montana v. Wyoming* (2011) 131
S.Ct. 1765, 1774-75.) The doctrine of stare decisis prohibits this Court from applying case law
from another jurisdiction when there are controlling decisions issued by the California Supreme
Court and Courts of Appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,

1 455-456; *Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 844; *Kelly v.*
2 *Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1337.)

3 The Court finds that Phelan Piñon Hills provided no credible evidence that demonstrated
4 that Phelan Piñon Hills imported water or otherwise augmented the groundwater supply in the
5 Adjudication Area. By its own admission, Phelan Piñon Hills never imported any water into the
6 Adjudication Area, and has not net augmented the groundwater supply in the Adjudication Area.
7 Mr. Harder's testimony indicates that the amount of groundwater pumped by Phelan Piñon Hills
8 exceeds its total amount of claimed return flows within the Adjudication Area. Additionally, to
9 the extent "return flows" from native water pumped by Phelan Piñon Hills enter the Adjudication
10 Area, they merely "lessen the diminution occasioned" by Phelan Piñon Hills' extraction and do
11 not augment the Adjudication Area's groundwater supply. (*Id.*)

12
13 **C. Impact of Phelan Piñon Hills' Pumping of Groundwater Upon the**
14 **Adjudication Area**

15 The Court finds that Phelan Piñon Hills' pumping of groundwater from the Antelope
16 Valley Groundwater Basin negatively impacts the Butte sub basin and the Adjudication Area.
17 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

18 It is uncontested that Phelan Piñon Hills' Well 14 is located in an area of the
19 Adjudication Area generally known as the Butte subbasin, which borders the Lancaster sub
20 basin. (Ex. Phelan CSD-27.) The Court finds that the Butte subbasin and the Lancaster sub
21 basin are hydrologically connected. The Court also finds that groundwater from the Butte sub
22 basin is a source of groundwater recharge for the Lancaster sub basin, and that groundwater
23 pumping in the Butte sub basin could lower the groundwater level in the aquifer. The Court
24 further finds that Phelan Piñon Hills' operation of its three groundwater wells located near Well
25 14 intercepts groundwater that would otherwise flow into and recharge the Adjudication Area.
26 Based on these uncontroverted facts, the Court concludes that Phelan Piñon Hills' pumping of
27 groundwater from the Antelope Valley Groundwater Basin as described in Bulletin 118
28 negatively impacts the Butte subbasin, the Lancaster subbasin, and the Adjudication Area.

1 **D. Burden of Proof**

2 The court finds that Phelan Piñon Hills has the burden of proof to establish each fact
3 necessary to its second and sixth causes of action, and it failed to meet its burden of proof.
4 There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

5 Evidence Code Section 500 provides, “[e]xcept as otherwise provided by law a party has
6 the burden of proof as to each fact, the existence or nonexistence of which is essential to the
7 claim for relief or defense that he is asserting.” As the Cross-Complainant, Phelan Piñon Hills
8 has the affirmative obligation to prove the facts that are essential to its claims, which it has failed
9 to do for the reasons discussed above.

10 Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of
11 action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove
12 the existence of surplus water, existing appropriators, riparian, or overlying owners must
13 establish their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-*
14 *Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 [“In the present case, while it is true the
15 burden was on appellant to prove the existence of a surplus, that burden did not come into
16 existence until after the respondent riparians first proved the amount required by them for
17 reasonable beneficial purposes.”].) The Court recognizes that while overdraft and native safe
18 yield of the Adjudication Area were determined in Phase 3 trial and that Adjudication Area
19 groundwater pumping in 2011 and 2012 exceeded the safe yield², this Court has not made a
20 determination as to whether each party’s water use is reasonable and beneficial. The Court will
21 make such a determination prior to the entry of final judgment.

22 Phelan Piñon Hills has not proved that there is a surplus contrary to the court’s
23 determination that the basin aquifer is in overdraft. If a final judgment is entered based upon the
24 overdraft, the court will be required to provide for the management of the basin aquifer and will
25 provide for monitoring pumping to preserve the integrity of the aquifer. Phelan Piñon Hills has
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28 ² Statement of Decision, Phase 4 Trial (June 29, 2013).

1 five other causes of action in its cross complaint and as a pumper may be required to participate
2 in the monitoring program which will establish the reasonable and beneficial use of each
3 pumper within the aquifer as well as rights to produce water, whether as appropriator, overlying
4 owner, or prescriber. The decision here only determines that at this time Phelan Piñon Hills is an
5 appropriator without a priority as to overlying owners and appropriators with prescribed rights (if
6 any).

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9 Dated: FEB - 3 2015



10 Hon. Jack Komar (Ret.)
11 Judge of the Superior Court
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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.)
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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 Píñon 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. "[E]vidence 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. Robar*
The Supporting Landowner Parties claim overlying rights to the Basin’s groundwater.

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

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*Supporting Parties, Inc., Hi-Grade Materials, Co.,
and CTR, a General Partnership -
200 acre-feet per year.*

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) Federal Reserved Rights

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

2) Small Pumper Class

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

3) Overlying Landowner Parties and Public Overliers

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

4) Unknown Existing Pumpers

The Physical Solution provides for the allocation of groundwater to unknown *existing* pumpers that prove their respective entitlement to water rights in the future. (Physical Solution, ¶¶5.1.10, 18.5.13.) Such allocations will not result in continuing overdraft, as the Physical Solution provides for the Water Master to adjust allocations or take other action necessary to 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,
Judgment, or Physical Solution, alters the agreed-upon allocations between*
17 *The Court finds that the Physical Solution is consistent with the Willis Class Stipulation the Public
Water Suppliers and the Willis*
18 for at least the following reasons:

- 19 1) The Willis Class Stipulation recognizes that there would be Court-imposed class,
20 limits on the Willis Class' correlative share of overlying rights because the *on that relation-*
21 Basin is and has been in an overdraft condition for decades; *has no impact*
22 2) No member of the Willis Class has established any present right to produce *on the court's duty*
23 groundwater for reasonable and beneficial use based on their unexercised *to*
24 overlying claim; and *impose a*
25 3) The Physical Solution recognizes the Willis Class' share of correlative *Physical Solution*
26 overlying rights and does not unreasonably burden its members' rights *that protects the*
27 given the significant reductions in groundwater pumping and increased *Basin.*
28 expense incurred by the Stipulating Parties in the Physical Solution. At

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.)

- 27 -

STATEMENT OF DECISION

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

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PROOF OF SERVICE

I, Isabel Grubbs, declare:

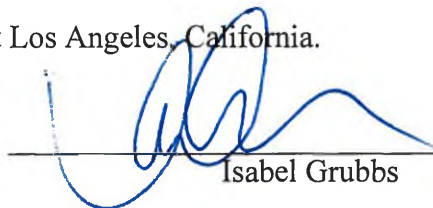
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On April 5, 2018, I served the following document(s):

**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO
PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S 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 WENDY Y.
WANG**



by posting the document(s) listed above to the Antelope Valley Watermaster website with e-service to all parties listed on the websites Service List.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 5, 2018, at Los Angeles, California.


Isabel Grubbs

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1 ANTELOPE VALLEY WATERMASTER
ELECTRONIC DOCUMENT SERVICE - WWW.AVWATERMASTER.ORG
c/o Glotrans
2915 McClure Street
Oakland, CA94609
2 EMAIL: Support@Glotrans.com
3

4 ANTELOPE VALLEY WATERMASTER
IN AND FOR ANTELOPE VALLEY, CALIFORNIA
5

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40	)	Antelope Valley Groundwater Cases (JCCP 4408)
)	
	)	Lead Case No.1-05-CV-049053
)	
Plaintiff,	)	Hon. Jack Komar
vs.)	
)	
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)	
)	
Defendant.)	
)	
AND RELATED ACTIONS	)	PROOF OF SERVICE Electronic Proof of Service

14 I am employed in the County of Alameda, State of California.

15 I am over the age of 18 and not a party to the within action; my business address is 2915 McClure
16 Street, Oakland, CA 94609.

17 The documents described on page 2 of this Electronic Proof of Service were submitted via the
18 worldwide web on Thu. April 5, 2018 at 2:29 PM PDT and served by electronic mail notification.

19 I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and
20 am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described
21 document's electronic service in the following manner:

22 The document was electronically uploaded to the Antelope Valley Watermaster's website,
23 <http://www.avwatermaster.org>, on Thu. April 5, 2018 at 2:29 PM PDT .

An electronic mail message was transmitted to all parties on the electronic service list maintained for this case at www.avwatermaster.org. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 5, 2018 at Oakland, California.

Dated: April 5, 2018

For WWW.AVWATERMASTER.ORG

Andy Jamieson

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ANTELOPE VALLEY WATERMASTER DOCUMENTS
ANVELOPE VALLEY WATERMASTER - WWW.AVWATERMASTER.ORG

Electronic Proof of Service
Page 2

Document(s) submitted by Jeffrey Dunn of Best Best & Krieger, LLP on Thu. April 5, 2018 at 2:29 PM PDT

1. Opposition: Water Suppliers' Opposition to Phelan Pinon Hills Community Services District's Motion for Declaration Relief re Judgment Entered Dec. 23, 1015 and Watermaster Resolution No. R-18-04 re replacement water assessments for 2016 and 2017 ; Declaration of Wendy Y. Wang

TAB 5

COPY

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Superior Court of California
County of Los Angeles

APR 11 2018

Sherri R. Carter, Executive Officer/Clerk
By: Gloriella Robinson, Deputy

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Phelan Piñon Hills Community Services District

**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 REPLY BRIEF
ON 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**

Assigned for All Purposes To:
Hon. Jack Komar

Date: 4/18/2018

Time: 9:00 a.m.

Place: Dept. 31 (Room 407, 4th floor)
Los Angeles County Superior Court,
Stanley Mosk Courthouse,
Los Angeles, CA

FAXED

**ALESHIRE &
WYNDER LLP**
ATTORNEYS AT LAW



Cross-Defendant Phelan Piñon Hills Community Services District (“Phelan”) hereby REPLIES to the Oppositions to Phelan Piñon Hills Community Services District’s Motion For Declaratory Relief filed by the Antelope Valley Watermaster (as joined by Palmdale Water District) and the Water Suppliers (collectively, “Oppositions”).

I. INTRODUCTION

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

“Phelan is a Producer”

ergo

“During the first two Years of the Rampdown Period, Phelan will not be subject to a Replacement Water Assessment”

Neither the wording, nor the logic, could be any clearer or more persuasive; yet the Oppositions posit a tortured interpretation of the Judgment in an effort to cobble together an argument that the Judgment requires Phelan to pay Replacement Water Assessments (“RWA”) for 2016 and 2017. For the reasons set forth below, such argument has no merit.

II. THE OPPOSITIONS CONCEDE THAT PURSUANT TO THE CUSTOMARY RULES OF DOCUMENT INTERPRETATION, PHELAN IS NOT SUBJECT TO WRA’S FOR 2016 AND 2017

In its Moving Papers, Phelan painstakingly walked the Court through the Judgment, Statement of Decision, and February 5, 2018 Order applying the customary principles of document interpretation including (1) words should be given their plain or specially-defined meanings, (2) all parts of a document should be read together, and (3) “courts should not insert what has been omitted or omit what has been inserted,” with such analysis leading to the inescapable conclusion that Phelan is not required to pay RWAs for 2016 and 2017.

The Oppositions do not dispute this. Nor can they. Instead, as shown further below, they cherry pick portions of the Judgment out of context and offer unsupported arguments why those portions, *despite the rules of document interpretation*, require Phelan to pay the RWAs.

III. THE ANTELOPE VALLEY WATERMASTER'S OPPOSITION HAS NO MERIT

At 4:17-5:14 of its Opposition the Watermaster argues that Phelan must pay RWAs for 2016 and 2017 because it has no production rights or pre-rampdown production rights under the Judgment. The Watermaster posits that Phelan only has a right to export groundwater under specified conditions, and those conditions include payment of RWAs.

In response, Phelan notes that it, *as well as all other Producers*, may be subject to RWAs under certain circumstances (including during the Rampdown Period), but Section 8.3 of Exhibit A to the Judgment provides a two-year blanket exemption from RWAs for *all Producers*, without qualification. ("During the first two Years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment.")

At 5:15-6:21 of its Opposition, the Watermaster speculates that Phelan is arguing that "right to produce" is synonymous with "Production Rights," and that because Producers with Production Rights are exempted from RWAs, Phelan is exempt from paying RWAs. The Watermaster goes on to explain such argument lacks merit because "right to produce" is not the same as "Production Rights."

In response, Phelan makes no such argument. Phelan never contends that its "right to produce" amounts to a "Production Right" under the Judgment. Thus, the Watermaster's argument is a red-herring. Phelan's argument is that all Producers, whether they have Production Rights, rights to produce, or anything else that meets the definition of "Producer" (being "a Party that Produces Groundwater") are exempt from two years of RWAs by the express terms of the Judgment.

At 6:22-7:16, the Watermaster contends that a two-year exemption from RWAs for Phelan would be inconsistent with the Physical Solution because Phelan's production *may* (not "did") result in Material Injury to the Adjudication Area without compensation by way of paying for replacement water.

In response, Phelan notes that there has never been a finding that Phelan's production resulted in Material Injury as such term is defined in the Judgment. All Producers, including Phelan, contributed to the Overdraft, and all Producers receive the two-year exemption from RWAs. Nothing in the Judgment states, or even implies, that only Phelan should pay for contributing to the Overdraft during 2016 and 2017.

At 7:17-8:13 of its Opposition, the Watermaster asserts that because Phelan is not listed on Exhibits 3 or 4 to the Judgment and is not a “supporting but non-stipulating party;” therefore, it cannot avail itself of the two-year exemption from RWAs.

In response, Phelan finds nothing in the Judgment that states that only those listed in Exhibits 3 or 4 or are “supporting but non-stipulating parties” receive a two-year exemption from RWAs. Such exemption applies to all Producers, and the Court’s February 5, 2018 Order reflected such interpretation, to wit “[t]hat clearly places (1) all water producers, (2) both Exhibit 3 and Exhibit 4 parties, and (3) supporting but non-stipulating parties who are bound by the judgment, within the provisions of 8.3” (numbering added). If the intent of the Order was only to include Exhibit 3 and 4 parties and “supporting and non-stipulating parties” within Section 8.3, “water producers” would be superfluous, which is an interpretation that flies in the face of document construction rules.

IV. THE WATER SUPPLIERS’ OPPOSITION HAS NO MERIT

At 2:16-3:8 of their Opposition, the Water Suppliers assert that Phelan should pay the RWA’s because Phelan’s pumping “harms the Basin.”

In response, Phelan first notes that *everybody* who pumped groundwater and contributed to the overdraft “harmed the Basin” to some degree. But “harm to the Basin” is not the test for determining whether Phelan is exempt from RWAs for two years. The only “test” under the terms of Section 8.3 of the Judgment is whether Phelan is a Producer, and it is undisputed that Phelan is a Producer. Accordingly, the Water Suppliers’ assertion is irrelevant.¹

At 3:9-24 of their Opposition, *the* Water Suppliers contend that Section 6.4.1.2 of the Physical Solution provides the only mechanism by which Phelan may pump groundwater, and that mechanism includes payment of RWAs.

In response, Phelan notes that the Judgment provides other mechanisms by which Producers may be required to pay RWAs (including during the Rampdown Period), so Phelan is not alone. Phelan is simply a member of a class of parties subject to RWAs called Producers, and all Producers

¹ Although irrelevant to the instant Motion, “harm to the Basin” is not the same as “Material Injury,” which is a specifically-defined term in the Judgment, and there is no finding that any pumping by Phelan has caused Material Injury.

1 receive a two-year exemption from RWAs during the Rampdown Process. Indeed, in its February 5,
2 2018 Order, the Court stated:

3 *It must be emphasized that the court's approval of the physical solution in fact,*
4 *based upon competent evidence, contemplated that **all parties** would have the benefit*
5 *of the 7 year rampdown process and that the physical solution would achieve a*
6 *balanced aquifer during the specified period. (Id. at 10:3-7, emphasis added)*

7 Because Phelan is a Party, and the Rampdown Process includes the benefit of a two- year
8 exemption from RWAs, Phelan should receive such benefit just like everyone else.

9 At 3:25-4:11 of their Opposition, the Water Suppliers, like the Watermaster, contend that
10 because Phelan has no “water rights,” it cannot be exempt from two years of RWA’s.

11 In response, Phelan re-asserts its response to the same argument made by the Watermaster
12 above.

13 At 4:12-18 of their Opposition, the Water Suppliers assert that “[i]mplicit in the definitions of
14 “Produce” and “Producer” and the Rampdown provision is that to “Produce” groundwater during the
15 Rampdown Period a party must have a water right.”

16 In response, Phelan again contends that it is improper to “imply” something into a definition
17 that contradicts the “express” provisions of such definition. If the Judgment contemplated that
18 “Producers” be defined as “Parties with Water Rights” it would have said so. It does not.

19 At 4:19-24 of their Opposition, the Water Suppliers contend that under Phelan’s position,
20 “there would be nothing to prevent the tens of thousands of parties in this action who have never
21 pumped groundwater from the Basin from drilling a well and pumping Groundwater free of a RWA
22 for two years.”

23 In response, Phelan replies: Yes there is. The two year exemption from RWAs was for the
24 years 2016 and 2017 (Years 1 and 2 of Rampdown Period). It is now 2018. So, despite the Water
25 Suppliers’ assertion to the contrary, the time for the tens of thousands of parties to drill and pump and
26 avail themselves of the two year exemption from RWA’s has passed.

27 ///

1 **V. CONCLUSION**

2 In its Moving Papers, Phelan posed the following question:

3 *"[W]hat effect can possibly be given to the first sentence of Section 8.3 other than to*
4 *include Phelan in the class of Producers that are not required to pay Replacement*
5 *Water Assessments in 2016 and 2017?"*

6 None of the arguments presented in either of the Oppositions answer that question. Instead,
7 both Oppositions ask the court to disregard the first sentence of Section 8.3 and the defined terms in it,
8 all of which are part of a Judgment that the opposing parties stipulated to enter.

9 Accordingly, the court should GRANT the instant Motion, hold that Phelan is exempt from
10 paying Replacement Water Assessments for 2016 and 2017, and declare WATERMASTER
11 RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016
12 AND 2017 void as being contrary to the Judgment entered December 23, 2015 in the instant action.

13 DATED: April 10, 2018

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

14
15
16 By: 

17 STEPHEN R. ONSTOT
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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 April 11, 2018, I served the within document(s) described as **PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S REPLY BRIEF ON 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** 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.

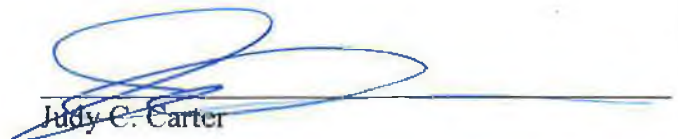
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Attorney for Watermaster Board for the Antelope Valley Groundwater Adjudication

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 April 11, 2018, at El Segundo, California.


Judy C. Carter

Judy Carter

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Sent: Wednesday, April 11, 2018 12:18 PM
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1. Reply: PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S REPLY BRIEF ON 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
 - 1.1. Proof of Electronic Service
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TAB 6

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Included Consolidated Actions:

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

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER HEARINGS ON
APRIL 18, 2018**

**Motion by PPHCSD Requesting
Declaratory Relief Regarding
Watermaster's Resolution R-18-04,
Finding PPHCSD's is Obligated to
Pay Replacement Water Assessment
Notwithstanding First Sentence of
Judgment Section 8.3.**

Judge: Honorable Jack Komar, Ret.

1
2
3 The above-entitled matters came on regularly for hearing on April 18, 2018 at 9:00 a.m.
4 in the Superior Court of California, County of Los Angeles, Room 222, the Honorable Jack
5 Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read
6 and considered the supporting and opposing papers, and having heard and considered the
7 arguments of counsel, and good cause appearing therefore, makes the following order:

8 The subject of this coordinated matter is an adjudication of conflicting claims for water
9 in a drought impacted, severely overdrawn aquifer in the Antelope Valley. The adjudication as
10 a coordinated case commenced in 2005 and was completed by entry of judgment in December
11 2015.

12 The court adjudicated the respective water rights of the residents, property owners,
13 municipalities, public service districts, industries, farmers, and public and private water
14 producers, and approved and adopted a remedy (physical solution) to relieve the continuing
15 shortage of water within the basin.

16 A Judgment was signed by the court on December 23, 2015, based upon the court's
17 findings of fact and a stipulation among most but not all of the parties to the litigation. As an
18 integral part of the judgment, the court adopted a physical solution which most of the parties
19 stipulated to or supported and which the court independently adopted, thereby making it
20 binding on all the parties to the adjudication.

21 The judgment and physical solution established which parties have water rights in the
22 adjudication area, quantifying such rights where possible, and established a process to
23 eliminate the overdraft by which all parties having a right to pump water from the aquifer
24 (water producers) are required to reduce their pumping from the native yield over a period of
25 time and to pay a replacement water assessment for any water pumped which exceeds their
26 annual and ultimately their permanent entitlement.

27 The judgment provides for a seven year period commencing in 2016 within which to
28 bring the aquifer into balance so that annual water production does not exceed the native safe

1 yield of the aquifer. With a gradual reduction of pumping by all water producers, by the end of
2 the rampdown period, the total amount of pumping is expected to not exceed the annual
3 recharge, and to bring the aquifer into balance. The physical solution and Judgment
4 established the creation of a Watermaster to manage the physical solution.

5 The motion by Defendant/Cross Complainant Phelan Pinon Hills Community Services
6 District (hereinafter Phelan) seeks a declaration that it is entitled to the benefit of Paragraph 8.3
7 of the physical solution (all references to paragraphs are to the numbered paragraphs in the
8 physical solution) which provides that “during the first two years of the Rampdown Period, no
9 producer will be subject to a replacement water assessment. The motion is opposed by the
10 Watermaster and the Public Water Producers.

11 Phelan occupies a unique position as a party to this litigation. Phelan is a public entity,
12 a community service district, and is charged with, among other things, a duty to provide water
13 to its customers. It owns a single well in the Antelope Valley Adjudication area from which it
14 obtains some of the water used to service its customers. None of its customers reside in the
15 subject adjudication area. As is explained below, Phelan has neither appropriative nor
16 prescriptive rights to pump or produce ground water in the adjudication area.

17 Notwithstanding that it has no correlative water right, in view of the public good and
18 the public interest, the court deemed it equitable to permit Phelan the right to continue to pump
19 water and export it for use of its customers with quantity limits so long as it paid for the water
20 based upon its replacement cost and so long it was not causing damage to the aquifer. The
21 amount of water that Phelan can pump is capped at 1200 acre feet per year based on its
22 historical usage. See Paragraph 6.4.1.2. The essence of Phelan’s theory is that because it pumps
23 water from the aquifer it is a producer, and that Paragraph 8.3 is unqualified in its description
24 of “producer.” The Watermaster and the public water producers have opposed Phelan’s
25 interpretation of the Paragraph 8.3.

26 While Phelan points to the express language of Paragraph 8.3, as the beginning and end
27 of the inquiry, it is necessary to look at the entirety of Paragraph 8 and all of its subparts (as
28 well as the entirety of the physical solution, including the entire rampdown process) to

1 evaluate Phelan's position. While the first sentence in Paragraph 8.3 does specifically
2 eliminate the replacement water assessment during the first two years of the rampdown period,
3 and in a vacuum might appear to support Phelan's argument, the second sentence makes clear
4 to whom the relief applies: "During years three through seven of the rampdown period, the
5 amount that each party may produce from the native safe yield will be progressively reduced as
6 necessary, in equal annual increments, from its Pre-rampdown production to its Production
7 right. . . any amount produced over the required production shall be subject to the
8 replacement water assessment." See Paragraph 9.2.

9 Parties with a prescriptive or other appropriative or "legacy" right¹ to produce water
10 from the native yield are described in Paragraph 5.1 et seq., and includes the small pumper
11 class, overlying producers, non-overlying producers (public water suppliers with prescriptive
12 rights) as well as the federal and state government entities. While Paragraph 3.5.30 defines a
13 producer as a party who produces groundwater, "produce" is defined as pumping that is for
14 reasonable and beneficial uses. Paragraph 3.5.29.

15 The issue requires interpretation of the judgment and the court approved physical
16 solution. All parties contend that the stipulation and judgment is clear on its face although they
17 arrive at different conclusions. No party has offered parol or extrinsic evidence to interpret the
18 stipulation or the judgment. However, in ascertaining the intent of the judgment and the
19 language used in its interpretation, it is necessary to consider the court's statements of
20 decisions, the evidence upon which the court based the approval of the physical solution, and
21 the entirety of the physical solution and the judgment.

22 The physical solution "requires quantifying the Producers' rights within the basin
23 which will reasonably allocate the Native Safe Yield..." Paragraph 7. Phelan was found to not
24 have any correlative or other rights to native yield. It acquired no prescriptive right,² made no
25 reasonable and beneficial use of any water on property from which it pumped water within
26 the adjudication area, and exported all water pumped from its single well out of the
27

28 ¹ Parties who protected their correlative rights by pumping water in the face of prescriptive claims.

² Phelan produced no evidence to support a prescriptive right and voluntarily dismissed a claim for prescription.

1 adjudication area for use of its customers in the Mojave Adjudication Area. See Partial
2 Statement of Decision of February 3, 2015. The aquifer was, and has long been, in severe
3 overdraft at the time that Phelan first commenced pumping from its well in 2005 in the
4 adjudication area r and it could not establish an appropriative right. There was no surplus of
5 ground water. Phelan's only right to pump is under the provisions of Paragraph 6.4.1.2. See
6 also Paragraph 3(f) of the Judgment itself.

7
8
9 As a party not having a right to a correlative share of the water in the aquifer, Phelan
10 also has no obligations or other burdens or role in the rampdown process or the rampdown
11 period. Consequently, because Phelan has no rampdown obligations, the provisions relieving a
12 producer of the obligation to pay a water replacement assessment for pumping over its reduced
13 pumping rights has no relevance or impact on Phelan. Only parties subject to the rampdown
14 are required to reduce the amount of water pumped over the rampdown period at their own cost
15 and to pay a replacement water assessment only if they pump more than their reduced right.

16 The Replacement Water Assessment as specified in Paragraph 9.2 is designed to ensure
17 that as the various producers water rights are reduced, water used above the reduced right will
18 result in an assessment to permit the Watermaster to replace that excess water with imported
19 water. Phelan has no water rights, is not obligated to engage in pumping reduction, and is
20 permitted to produce and pay for up to 1200-acre feet a year. The rampdown provisions do not
21 apply to Phelan which has no right to produce water from the aquifer without paying for
22 replacement water. It also has no rampdown obligations. If it uses water, it must pay for it.

23
24 Phelan is neither a stipulating nor a supporting party to the judgment. Paragraph 5.1.10
25 specifically provides that non-stipulating parties are subject to the judgment's terms but if such
26 party has any water rights as determined by the court, it is subject to reduction in production to
27 implement the physical solution, and the requirement to pay assessments, but shall not be
28 entitled to benefits provided by the stipulation. Here, the court found that Phelan was an

1 appropriator without any water rights, but accorded it a right to pump but that it must, in effect,
2 pay for all water pumped out of the adjudication area so that the water taken can be replaced by
3 imported water. Phelan's water pumping right is not based on a correlative right to water in the
4 aquifer.

5 Paragraph 6.4.1.2 in effect permits Phelan to pay for water to replace all water it pumps
6 out of the adjudication area so long as it nets out the water pumped by water to be replaced.
7 But that does not make Phelan a water producer of right from the native safe yield. The
8 specific language of 6.4.2.1 permits Phelan to pump "up to 1200 acre feet a year" so long as it
9 causes no material injury to the native safe yield and so long as it pays a water replacement
10 assessment so that the water it removes can be returned by purchased water acquired by the
11 Watermaster . Because Phelan has no right to pump water from the native yield without paying
12 for the same, it is not a water producer as defined in Paragraphs 5.1 et seq.

13 The parties seeking approval of the proposed physical solution and judgment offered
14 evidence to justify and support the proposal. The physical solution was dependent on that
15 evidence . The rights granted to Phelan were only to be a purchaser of water so that its use
16 could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as
17 either a plus or a minus- it was intended to have no net impact. If, as it requests, it is not
18 required to pay for water pumped during 2016 and 1017, its pumping would contribute to the
19 overdraft by pumping water to which it has no right.

20
21 The expert opinions were based on the provisions of the stipulation and court's various
22 trial phase statements of decision, subject to the specifics in the proposed judgment and the
23 stipulation. The testimony provided justification for the efficacy of the physical solution,
24 showing how the rampdown process would be able to bring the basin into balance within 7
25 years. The entirety of the statements of decision and the findings of the court upon which the
26 experts opinions were based included findings that Phelan had no water rights (and because all
27 water pumped by it would be replaced by water purchased by water replacement assessments,
28 Phelan's water use was not subject to the rampdown provisions). Phelan received no burdens

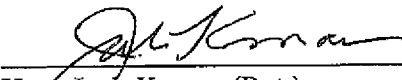
1 (other than the water assessment) and would receive no benefits from the stipulation since it
2 had no reduction obligations and was neither a stipulating nor a supporting party to the
3 physical solution or the judgment.

4 **CONCLUSION**

5 The court concludes that Phelan is not entitled to the provisions of Paragraph 8.3. The
6 specification that “during the first two years of the Rampdown Period no *producer* shall be
7 subject to a Replacement Water Assessment . . .” (emphasis added) is not unqualified. It limits
8 the definition of “producers” to parties having a right to pump from the native yield but who
9 also have a duty to reduce pumping.

10 SO ORDERED.

11
12 Dated: April 26, 2018



Hon. Jack Komar (Ret.)
Judge of the Superior Court

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 April 27, 2018, I served the within document(s) described as **ORDER AFTER HEARINGS ON APRIL 18, 2018 RE: MOTION BY PPHCSD REQUESTING DECLARATORY RELIEF REGARDING WATERMASTER'S RESOLUTION R-18-04, FINDING PPHCSD'S IS OBLIGATED TO PAY REPLACEMENT WATER ASSESSMENT NOTWITHSTANDING FIRST SENTENCE OF JUDGMENT SECTION 8.3.** 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 MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Aleshire & Wynder, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Irvine, California.

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Attorney for Watermaster Board for the Antelope Valley Groundwater Adjudication

VIA U.S. MAIL

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

Executed on April 27, 2018, at El Segundo, California

Judy C. Carter

Judy Carter

From: Avwatermaster E-Service <support@glotrans.com>
Sent: Friday, April 27, 2018 12:24 PM
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ANTELOPE VALLEY GROUNDWATER LITIGATION (JCCP 4408)

Electronic submission: #G-85392

Santa Clara County Superior Court case:
1-05-CV-049053:
Antelope Valley Groundwater Cases (JCCP 4408)

Document filer's name:
June Ailin

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Documents contained in your submission:

1. Notice: Entry of Order: ORDER AFTER HEARINGS ON APRIL 18, 2018 RE: MOTION BY PPHCSD REQUESTING DECLARATORY RELIEF REGARDING WATERMASTER'S RESOLUTION R-18-04, FINDING PPHCSD'S IS OBLIGATED TO PAY REPLACEMENT WATER ASSESSMENT NOTWITHSTANDING FIRST SENTENCE OF JUDGMENT SECTION 8.3.
 - 1.1. Proof of Electronic Service

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TAB 7

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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**

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)

NOTICE OF APPEAL

Assigned for All Purposes to:
Hon. Jack Komar

[Current Appeals pending in the
Fifth Appellate District
Case No. F075451]

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ALESHIRE &
WYNDELL
ATTORNEYS AT LAW




1 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:
2 Defendant/Cross-Complainant and Appellant PHELAN PIÑON HILLS COMMUNITY
3 SERVICES DISTRICT hereby appeals from the Order After Hearings on April 18, 2018, dated April
4 26, 2018 and entered on April 27, 2018.

5
6 DATED: May 16, 2018

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

7
8
9 By:


JUNE S. AILIN
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3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I, Judy C. Carter,

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

9 On May 17, 2018, I served the within document(s) described as **NOTICE OF APPEAL** on
10 the interested parties in this action as follows:

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

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

20 Craig Andrews Parton
21 Price Postel & Parma
22 200 E. Carrillo St., Suite 400
23 Santa Barbara, CA 93101
24 Tel: (805) 962-0011
25 (805) 965-3978

*Attorney for Watermaster Board for the Antelope
Valley Groundwater Adjudication*

VIA OVERNIGHT MAIL

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

28 Executed on May 17, 2018, at El Segundo, California.


Judy C. Carter

Judy Carter

From: AVWM Documents <support@glotrans.com>
Sent: Thursday, May 17, 2018 2:04 PM
To: Judy Carter
Subject: Antelope Valley Groundwater Cases E-Service

Antelope Valley Groundwater Cases (JCCP #4408)

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Case No: 1-05-CV-049053

Antelope Valley Groundwater Cases (JCCP 4408)

Document #128094:

Title: **NOTICE OF APPEAL** ([Click here to view document information](#))

Type: Notice of Appeal, Unlimited

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Parties: Phelan Pinon Hills Community Services District
Ailin, June - Aleshire & Wynder, LLP

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**ANTELOPE VALLEY WATERMASTER
IN AND FOR ANTELOPE VALLEY, CALIFORNIA**

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40)	Antelope Valley Groundwater Cases (JCCP 4408)
)	
	)	Lead Case No.1-05-CV-049053
)	
Plaintiff,	)	Hon. Jack Komar
vs.)	
)	
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)	
)	
Defendant.)	
)	
<hr/> AND RELATED ACTIONS<hr/>	)	PROOF OF SERVICE Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Thu. May 17, 2018 at 1:00 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically uploaded to the Antelope Valley Watermaster's website, <http://www.avwatermaster.org>, on Thu. May 17, 2018 at 1:00 PM PDT .

An electronic mail message was transmitted to all parties on the electronic service list maintained for this case at www.avwatermaster.org. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 17, 2018 at Oakland, California.

Dated: May 17, 2018

For WWW.AVWATERMASTER.ORG

Andy Jamieson

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ANTELOPE VALLEY WATERMASTER DOCUMENTS
ANVELOPE VALLEY WATERMASTER - WWW.AVWATERMASTER.ORG

Electronic Proof of Service
Page 2

Document(s) submitted by June Ailin of Aleshire & Wynder, LLP on Thu. May 17, 2018 at 1:00 PM PDT

1. Ntc of Appeal/Unltd: NOTICE OF APPEAL

TAB 8

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County of Los Angeles

MAY 25 2018

Sherri R. Carter, Executive Officer/Clerk
By: Runako Innes, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

12 Coordination Proceeding
Special Title (Rule 1550(b))
13

14 **ANTELOPE VALLEY
GROUNDWATER CASES**

15 Included Actions:

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

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

22 *Wm. Bolthouse Farms, Inc. v. City of*
23 *Lancaster*
Diamond Farming Co. v. City of Lancaster
24 *Diamond Farming Co. v. Palmdale Water*
Dist.
25 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
26 840, RIC 344 436, RIC 344 668

27 **AND RELATED CROSS-ACTIONS**
28

Case No. Judicial Council Coordination
Proceeding No. 4408

**NOTICE OF ENTRY OF ORDER AFTER
HEARINGS ON APRIL 18, 2018**

**[Motion by PPHCSD Requesting
Declaratory Relief Regarding
Watermaster's Resolution R-18-04, Finding
PPHCSD is Obligated to Pay Replacement
Water Assessment Notwithstanding First
Sentence of Judgment Section 8.3]**

Assigned for All Purposes to:
Hon. Jack Komar

COPY

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1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 18, 2018, an Order was entered in the above entitled
3 Court. A true and correct copy of the Court's Order is attached hereto.

4 DATED: May 25, 2018

Respectfully submitted,

5 ALESHIRE & WYNDER, LLP
6 JUNE S. AILIN

7
8 By:



9 JUNE S. AILIN

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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

**ORDER AFTER HEARINGS ON
APRIL 18, 2018**

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

**Motion by PPHCSD Requesting
Declaratory Relief Regarding
Watermaster's Resolution R-18-04,
Finding PPHCSD's is Obligated to
Pay Replacement Water Assessment
Notwithstanding First Sentence of
Judgment Section 8.3.**

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

Judge: Honorable Jack Komar, Ret.

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

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3 The above-entitled matters came on regularly for hearing on April 18, 2018 at 9:00 a.m.
4 in the Superior Court of California, County of Los Angeles, Room 222, the Honorable Jack
5 Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read
6 and considered the supporting and opposing papers, and having heard and considered the
7 arguments of counsel, and good cause appearing therefore, makes the following order:

8 The subject of this coordinated matter is an adjudication of conflicting claims for water
9 in a drought impacted, severely overdrawn aquifer in the Antelope Valley. The adjudication as
10 a coordinated case commenced in 2005 and was completed by entry of judgment in December
11 2015.

12 The court adjudicated the respective water rights of the residents, property owners,
13 municipalities, public service districts, industries, farmers, and public and private water
14 producers, and approved and adopted a remedy (physical solution) to relieve the continuing
15 shortage of water within the basin.

16 A Judgment was signed by the court on December 23, 2015, based upon the court's
17 findings of fact and a stipulation among most but not all of the parties to the litigation. As an
18 integral part of the judgment, the court adopted a physical solution which most of the parties
19 stipulated to or supported and which the court independently adopted, thereby making it
20 binding on all the parties to the adjudication.

21 The judgment and physical solution established which parties have water rights in the
22 adjudication area, quantifying such rights where possible, and established a process to
23 eliminate the overdraft by which all parties having a right to pump water from the aquifer
24 (water producers) are required to reduce their pumping from the native yield over a period of
25 time and to pay a replacement water assessment for any water pumped which exceeds their
26 annual and ultimately their permanent entitlement.

27 The judgment provides for a seven year period commencing in 2016 within which to
28 bring the aquifer into balance so that annual water production does not exceed the native safe

1 yield of the aquifer. With a gradual reduction of pumping by all water producers, by the end of
2 the rampdown period, the total amount of pumping is expected to not exceed the annual
3 recharge, and to bring the aquifer into balance. The physical solution and Judgment
4 established the creation of a Watermaster to manage the physical solution.

5 The motion by Defendant/Cross Complainant Phelan Pinon Hills Community Services
6 District (hereinafter Phelan) seeks a declaration that it is entitled to the benefit of Paragraph 8.3
7 of the physical solution (all references to paragraphs are to the numbered paragraphs in the
8 physical solution) which provides that “during the first two years of the Rampdown Period, no
9 producer will be subject to a replacement water assessment. The motion is opposed by the
10 Watermaster and the Public Water Producers.

11 Phelan occupies a unique position as a party to this litigation. Phelan is a public entity,
12 a community service district, and is charged with, among other things, a duty to provide water
13 to its customers. It owns a single well in the Antelope Valley Adjudication area from which it
14 obtains some of the water used to service its customers. None of its customers reside in the
15 subject adjudication area. As is explained below, Phelan has neither appropriative nor
16 prescriptive rights to pump or produce ground water in the adjudication area.

17 Notwithstanding that it has no correlative water right, in view of the public good and
18 the public interest, the court deemed it equitable to permit Phelan the right to continue to pump
19 water and export it for use of its customers with quantity limits so long as it paid for the water
20 based upon its replacement cost and so long it was not causing damage to the aquifer. The
21 amount of water that Phelan can pump is capped at 1200 acre feet per year based on its
22 historical usage. See Paragraph 6.4.1.2. The essence of Phelan’s theory is that because it pumps
23 water from the aquifer it is a producer, and that Paragraph 8.3 is unqualified in its description
24 of “producer.” The Watermaster and the public water producers have opposed Phelan’s
25 interpretation of the Paragraph 8.3.

26 While Phelan points to the express language of Paragraph 8.3, as the beginning and end
27 of the inquiry, it is necessary to look at the entirety of Paragraph 8 and all of its subparts (as
28 well as the entirety of the physical solution, including the entire rampdown process) to

1 evaluate Phelan's position. While the first sentence in Paragraph 8.3 does specifically
2 eliminate the replacement water assessment during the first two years of the rampdown period,
3 and in a vacuum might appear to support Phelan's argument, the second sentence makes clear
4 to whom the relief applies: "During years three through seven of the rampdown period, the
5 amount that each party may produce from the native safe yield will be progressively reduced as
6 necessary, in equal annual increments, from its Pre-rampdown production to its Production
7 right. . . any amount produced over the required production shall be subject to the
8 replacement water assessment." See Paragraph 9.2.

9 Parties with a prescriptive or other appropriative or "legacy" right¹ to produce water
10 from the native yield are described in Paragraph 5.1 et seq., and includes the small pumper
11 class, overlying producers, non-overlying producers (public water suppliers with prescriptive
12 rights) as well as the federal and state government entities. While Paragraph 3.5.30 defines a
13 producer as a party who produces groundwater, "produce" is defined as pumping that is for
14 reasonable and beneficial uses. Paragraph 3.5.29.

15 The issue requires interpretation of the judgment and the court approved physical
16 solution. All parties contend that the stipulation and judgment is clear on its face although they
17 arrive at different conclusions. No party has offered parol or extrinsic evidence to interpret the
18 stipulation or the judgment. However, in ascertaining the intent of the judgment and the
19 language used in its interpretation, it is necessary to consider the court's statements of
20 decisions, the evidence upon which the court based the approval of the physical solution, and
21 the entirety of the physical solution and the judgment.

22 The physical solution "requires quantifying the Producers' rights within the basin
23 which will reasonably allocate the Native Safe Yield..." Paragraph 7. Phelan was found to not
24 have any correlative or other rights to native yield. It acquired no prescriptive right,² made no
25 reasonable and beneficial use of any water on property from which it pumped water within
26 the adjudication area, and exported all water pumped from its single well out of the
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¹ Parties who protected their correlative rights by pumping water in the face of prescriptive claims.

² Phelan produced no evidence to support a prescriptive right and voluntarily dismissed a claim for prescription.

1 adjudication area for use of its customers in the Mojave Adjudication Area. See Partial
2 Statement of Decision of February 3, 2015. The aquifer was, and has long been, in severe
3 overdraft at the time that Phelan first commenced pumping from its well in 2005 in the
4 adjudication area and it could not establish an appropriative right. There was no surplus of
5 ground water. Phelan's only right to pump is under the provisions of Paragraph 6.4.1.2. See
6 also Paragraph 3(f) of the Judgment itself.
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9 As a party not having a right to a correlative share of the water in the aquifer, Phelan
10 also has no obligations or other burdens or role in the rampdown process or the rampdown
11 period. Consequently, because Phelan has no rampdown obligations, the provisions relieving a
12 producer of the obligation to pay a water replacement assessment for pumping over its reduced
13 pumping rights has no relevance or impact on Phelan. Only parties subject to the rampdown
14 are required to reduce the amount of water pumped over the rampdown period at their own cost
15 and to pay a replacement water assessment only if they pump more than their reduced right.

16 The Replacement Water Assessment as specified in Paragraph 9.2 is designed to ensure
17 that as the various producers water rights are reduced, water used above the reduced right will
18 result in an assessment to permit the Watermaster to replace that excess water with imported
19 water. Phelan has no water rights, is not obligated to engage in pumping reduction, and is
20 permitted to produce and pay for up to 1200-acre feet a year. The rampdown provisions do not
21 apply to Phelan which has no right to produce water from the aquifer without paying for
22 replacement water. It also has no rampdown obligations. If it uses water, it must pay for it.
23

24 Phelan is neither a stipulating nor a supporting party to the judgment. Paragraph 5.1.10
25 specifically provides that non-stipulating parties are subject to the judgment's terms but if such
26 party has any water rights as determined by the court, it is subject to reduction in production to
27 implement the physical solution, and the requirement to pay assessments, but shall not be
28 entitled to benefits provided by the stipulation. Here, the court found that Phelan was an

1 appropriator without any water rights, but accorded it a right to pump but that it must, in effect,
2 pay for all water pumped out of the adjudication area so that the water taken can be replaced by
3 imported water. Phelan's water pumping right is not based on a correlative right to water in the
4 aquifer.

5 Paragraph 6.4.1.2 in effect permits Phelan to pay for water to replace all water it pumps
6 out of the adjudication area so long as it nets out the water pumped by water to be replaced.
7 But that does not make Phelan a water producer of right from the native safe yield. The
8 specific language of 6.4.2.1 permits Phelan to pump "up to 1200 acre feet a year" so long as it
9 causes no material injury to the native safe yield and so long as it pays a water replacement
10 assessment so that the water it removes can be returned by purchased water acquired by the
11 Watermaster . Because Phelan has no right to pump water from the native yield without paying
12 for the same, it is not a water producer as defined in Paragraphs 5.1 et seq.

13 The parties seeking approval of the proposed physical solution and judgment offered
14 evidence to justify and support the proposal. The physical solution was dependent on that
15 evidence . The rights granted to Phelan were only to be a purchaser of water so that its use
16 could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as
17 either a plus or a minus- it was intended to have no net impact. If, as it requests, it is not
18 required to pay for water pumped during 2016 and 1017, its pumping would contribute to the
19 overdraft by pumping water to which it has no right.

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21 The expert opinions were based on the provisions of the stipulation and court's various
22 trial phase statements of decision, subject to the specifics in the proposed judgment and the
23 stipulation. The testimony provided justification for the efficacy of the physical solution,
24 showing how the rampdown process would be able to bring the basin into balance within 7
25 years. The entirety of the statements of decision and the findings of the court upon which the
26 experts opinions were based included findings that Phelan had no water rights (and because all
27 water pumped by it would be replaced by water purchased by water replacement assessments,
28 Phelan's water use was not subject to the rampdown provisions). Phelan received no burdens


1 (other than the water assessment) and would receive no benefits from the stipulation since it
2 had no reduction obligations and was neither a stipulating nor a supporting party to the
3 physical solution or the judgment.

4 **CONCLUSION**

5 The court concludes that Phelan is not entitled to the provisions of Paragraph 8.3. The
6 specification that “during the first two years of the Rampdown Period no *producer* shall be
7 subject to a Replacement Water Assessment . . .” (emphasis added) is not unqualified. It limits
8 the definition of “producers” to parties having a right to pump from the native yield but who
9 also have a duty to reduce pumping.

10 SO ORDERED.

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12 Dated: April 26, 2018


13 Hon. Jack Komar (Ret.)
14 Judge of the Superior Court
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2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I, Judy C. Carter,

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

7 On May 25, 2018, I served the within document(s) described as **NOTICE OF ENTRY OF**
8 **ORDER AFTER HEARINGS ON APRIL 18, 2018** on the interested parties in this action as
follows:

9 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Antelope
10 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
11 through www.avwatermaster.org via Glotrans.

12 **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
13 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
14 authorized by the overnight service carrier to receive documents.

15 Craig Andrews Parton
Price Postel & Parma
200 E. Carrillo St., Suite 400
16 Santa Barbara, CA 93101
Tel: (805) 962-0011
17 (805) 965-3978

*Attorney for Watermaster Board for the Antelope
Valley Groundwater Adjudication*

VIA OVERNIGHT MAIL

18
19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct.

21 Executed on May 25, 2018, at El Segundo, California.

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23 
24 Judy C. Carter
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**ANTELOPE VALLEY WATERMASTER
ELECTRONIC DOCUMENT SERVICE - WWW.AVWATERMASTER.ORG**

c/o Glotrans
2915 McClure Street
Oakland, CA94609
EMAIL: Support@Glotrans.com

**ANTELOPE VALLEY WATERMASTER
IN AND FOR ANTELOPE VALLEY, CALIFORNIA**

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40	)	Antelope Valley Groundwater Cases (JCCP 4408)
)	
	)	Lead Case No.1-05-CV-049053
)	
Plaintiff,	)	Hon. Jack Komar
vs.)	
)	
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)	
)	
Defendant.)	
)	
<u>AND RELATED ACTIONS</u>	)	PROOF OF SERVICE Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Fri. May 25, 2018 at 12:36 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically uploaded to the Antelope Valley Watermaster's website, <http://www.avwatermaster.org>, on Fri. May 25, 2018 at 12:36 PM PDT .

An electronic mail message was transmitted to all parties on the electronic service list maintained for this case at www.avwatermaster.org. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 25, 2018 at Oakland, California.

Dated: May 25, 2018

For WWW.AVWATERMASTER.ORG

Andy Jamieson

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ANTELOPE VALLEY WATERMASTER DOCUMENTS
ANVELOPE VALLEY WATERMASTER - WWW.AVWATERMASTER.ORG

Electronic Proof of Service
Page 2

Document(s) submitted by June Ailin of Aleshire & Wynder, LLP on Fri. May 25, 2018 at 12:36 PM PDT

1. Ntc:Entry of Order: NOTICE OF ENTRY OF ORDER AFTER HEARINGS ON APRIL 18, 2018

TAB 9

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: June S. Ailin (SBN 109498) / Nicolas D. Papajohn (SBN 305364) FIRM NAME: Aleshire & Wynder, LLP STREET ADDRESS: 18881 Von Karman Ave., Ste. 1700 CITY: Irvine STATE: CA ZIP CODE: 92612 TELEPHONE NO: (949) 223-1170 FAX NO: (949) 223-1180 E-MAIL ADDRESS: jailin@awattorneys.com / npapajohn@awattorneys.com ATTORNEY FOR (name): Dft/X-Compl/App, Phelan Piñon Hills Community Services Dist.		CONFORMED COPY ORIGINAL FILED Superior Court of California County of Los Angeles MAY 29 2018 Sherri R. Carter, Executive Officer/Clerk Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012-3014 BRANCH NAME: Central District, Stanley Mosk Courthouse		
PLAINTIFF/PETITIONER: Coordination Proceeding Special Title (Rule 1550(b)) DEFENDANT/RESPONDENT: ANTELOPE VALLEY GROUNDWATER CASES		
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)		
RE: Appeal filed on (date): May 17, 2018		SUPERIOR COURT CASE NUMBER: JCCP 4408 (1-05-CV-049053) COURT OF APPEAL CASE NUMBER (if known): F075451
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.		

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed (you must check a. or b. below):

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

CASE NAME:
ANTELOPE VALLEY GROUNDWATER CASES

SUPERIOR COURT CASE NUMBER:
JCCP 4408 (1-05-CV-049053)

2. b. ☒ WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1) ☒ A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section on page 3 of this form.*) I have (*check all that apply*):
- (a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit for (*check either (i) or (ii)*):
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☒ Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) ☐ An agreed statement. (*Check and complete either (a) or (b) below.*)
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137. (*You must check (a), (b), or (c) below.*)
- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
- (c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (*You must attach the motion required under rule 8.137(a) to this form.*)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

- ☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding	Date or Dates
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4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(*You must complete this section if you checked item 1a above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.*)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description	Date of Filing
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- (1) Notice of appeal
- (2) Notice designating record on appeal (*this document*)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (*if any*)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (*if any*)

CASE NAME:
ANTELOPE VALLEY GROUNDWATER CASES

SUPERIOR COURT CASE NUMBER:
JCCP 4408 (1-05-CV-049053)

4 NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

- ☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

- ☐ Additional documents are listed on Attachment 4b beginning with number (13).

c. Exhibits to be included in clerk's transcript

- ☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

- ☐ Additional exhibits are listed on Attachment 4c beginning with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

- a. I request that the reporters provide (check one):

- (1) ☐ My copy of the reporter's transcript in electronic format.
- (2) ☐ My copy of the reporter's transcript in paper format.
- (3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

CASE NAME:
ANTELOPE VALLEY GROUNDWATER CASES

SUPERIOR COURT CASE NUMBER:
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5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)	April 18, 2018					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 5b beginning with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions— and, if applicable, the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)

	Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)						<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)						<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☒ include ☐ do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Points are set forth: ☐ Below ☐ On Attachment 7.

Date: May 25, 2018

June S. Ailin, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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HON. JACK KOMAR, JUDGE

CASE NO. JCCP4408

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1 APPEARANCES: (CONTINUED)

2 FOR DEFENDANTS QUARTZ HILL WATER DISTRICT, LITTLE ROCK
3 CREEK IRRIGATION DISTRICT, AND PALM RANCH:

4 MANUEL D. SERPA, ESQ.
5 OLIVAREZ MADRUGA
6 1100 SOUTH FLOWER STREET, SUITE 2200
7 LOS ANGELES, CALIFORNIA 90015
8 (213) 744-0099

9 FOR DEFENDANTS PALMDALE WATER DISTRICT:

10 THOMAS S. BUNN III, ESQ.
11 LAGERLOF SENEAL GOSNEY & KRUSE, LLP
12 301 NORTH LAKE AVENUE, 10TH FLOOR
13 PASADENA, CALIFORNIA 91101
14 (626) 793-9400

15 FOR GARY VAN DAM:

16 SCOTT K. KUNEY, ESQ.
17 LAW OFFICES OF YOUNG WOOLDRIDGE
18 1800 30TH STREET, 4TH FLOOR
19 BAKERSFIELD, CALIFORNIA 93301
20 (661) 327-9661
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I N D E X

VOLUME 1

APRIL 18, 2018

CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES

(NONE)

EXHIBITS

(NONE)

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY
3 GROUNDWATER CASES
4 LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 18, 2018
5 DEPARTMENT 31 HON. JACK KOMAR, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: JORGE P. DOMINGUEZ,
8 CSR NO. 12523
9 TIME: A.M. SESSION

10 (THE FOLLOWING PROCEEDINGS WERE
11 HELD IN OPEN COURT:)

12 THE COURT: ALL RIGHT. GOOD MORNING. THIS IS IN
13 THE ANTELOPE VALLEY GROUNDWATER CASES. WE HAVE TWO
14 MATTERS, I BELIEVE, ON FOR HEARING THIS MORNING. LET ME
15 TAKE THE MOST DIFFICULT ONE FIRST. IT'S A MOTION TO BE
16 RELIEVED AS COUNSEL. MR. KUNEY.

17 MR. KUNEY: GOOD MORNING, YOUR HONOR. SCOTT
18 KUNEY, LAW OFFICES OF YOUNG WOOLDRIDGE, APPEARING ON
19 BEHALF OF -- FOR A MOTION FOR RELIEF WITH REGARD TO GARY
20 VAN DAM, AN INDIVIDUAL.

21 THE COURT: IS THERE ANY APPEARANCE IN
22 OPPOSITION?

23 MR. KUNEY: I'M NOT AWARE OF ANY, YOUR HONOR.

24 THE COURT: ALL RIGHT. THE MOTION IS GRANTED.

25 MR. KUNEY: THANK YOU, YOUR HONOR. IF I MAY, I
26 CAN THEN -- I WILL SERVE AND FILE THAT ORDER THAT YOU'VE
27 SIGNED HERE TODAY ON MR. VAN DAM AND THAT WILL THEN
28 EFFECTUATE THE DATE OF RELIEF.

1 THE COURT: ALL RIGHT. MY ONLY CONCERN ABOUT THE
2 FORM OF THE ORDER IS THAT THIS MATTER IS PENDING ON
3 APPEAL AND THERE'S NOTHING IN THE ORDER THAT MAKES ANY
4 REFERENCE TO THAT. I DON'T KNOW IF IT REQUIRES A -- I
5 DON'T KNOW IF YOU'VE APPEARED ON THE APPEAL OR NOT, BUT
6 IT MIGHT REQUIRE SOME OTHER FORM OF ORDER.

7 MR. KUNEY: YOUR HONOR, I APPRECIATE YOU BRINGING
8 THAT UP. WE HAVE NOT BEEN ASKED TO APPEAR ON THE
9 APPEAL. WE HAVE NOT DONE THAT. WHAT WE INTEND TO BE
10 DOING, THEN, IS FILING SEPARATE PLEADINGS WITH THE COURT
11 OF APPEAL 5TH DISTRICT ADVISING THEM OF BOTH THE
12 ORIGINAL SUBSTITUTIONS WITH REGARD TO THE OTHER VAN DAM
13 PARTIES AND THEN YOUR HONOR'S ORDER AS WELL TO LET THEM
14 KNOW OF SITUATION AS WELL.

15 THE COURT: ALL RIGHT. WELL, THANK YOU VERY
16 MUCH, MR. KUNEY. I'VE SIGNED THE ORDER.

17 ALL RIGHT. NOW WE HAVE THE MOTION BY PHELAN.
18 LET'S HAVE COUNSEL'S APPEARANCES FOR THAT, PLEASE. I
19 NOTE THERE ARE A NUMBER OF COUNSEL WHO APPARENTLY HAVE
20 CALLED IN ON COURTCALL, AND I'M GOING TO REMIND YOU IF
21 YOU'RE ON COURTCALL AND YOU WISH TO BE HEARD WITH REGARD
22 TO THIS MOTION, MAKE CERTAIN THAT YOU DESCRIBE AND
23 DEFINE WHO YOU ARE EACH TIME.

24 ALL RIGHT. SO THE LET'S HAVE COUNSEL WHO ARE
25 IN THE COURTROOM APPEARING IDENTIFY THEMSELVES FOR THE
26 RECORD AND THE REPORTER.

27 MS. AILIN: GOOD MORNING, YOUR HONOR. JUNE AILIN
28 FOR PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT.

1 MR. PARTON: GOOD MORNING, YOUR HONOR. CRAIG
2 PARTON OF PRICE, POSTEL & PARMA, ON BEHALF OF THE
3 ANTELOPE VALLEY WATERMASTER.

4 MR. DUNN: GOOD MORNING, YOUR HONOR. JEFFREY
5 DUNN FOR LOS ANGELES COUNTY WATERWORKS DISTRICT NUMBER
6 40.

7 MR. SERPA: GOOD MORNING, YOUR HONOR. MANUEL
8 SERPA WITH OLIVAREZ, MADRUGA, LEMIEUX, O'NEIL
9 REPRESENTING QUARTZ HILL WATER DISTRICT, LITTLE ROCK
10 CREEK IRRIGATION DISTRICT AND PALM RANCH.

11 THE COURT: ALL RIGHT. THANK YOU. THIS MOTION
12 HAS BEEN FILED BY MS. AILIN ON BEHALF OF HER CLIENT. I
13 HAVE OBVIOUSLY READ THE MOTION, THE SUPPORTING
14 DOCUMENTS. I'VE READ THE OPPOSITION BY THE WATERMASTER,
15 AND I'VE RECEIVED AND READ THE REPLY THAT YOU FILED,
16 MS. AILIN. I WOULD INVITE FURTHER ARGUMENT.

17 MR. PARTON: THANK YOU, YOUR HONOR. FIRST I WANT
18 TO CLEAR UP SOME APPARENT MISPERCEPTIONS ABOUT THE ISSUE
19 PHELAN IS RAISING. IF YOU LOOK AT SOME OF THE ARGUMENTS
20 MADE IN THE OPPOSITIONS, THEY SEEM TO BE RESPONDING TO
21 THINGS THAT PHELAN ISN'T SAYING. PHELAN IS NOT CLAIMING
22 THAT JUDGMENT GIVES IT A WATER RIGHT. PHELAN IS NOT
23 CLAIMING THE JUDGMENT GIVES IT A RAMP DOWN RIGHT, AND
24 PHELAN IS NOT CLAIMING THAT IT HAS SOME SORT OF PRE-RAMP
25 DOWN RIGHT.

26 ALL WE'RE SAYING IS LIKE EVERY OTHER PRODUCER,
27 EVERY OTHER PARTY WHO PRODUCES GROUNDWATER, PHELAN DOES
28 NOT HAVE TO PAY A REPLACEMENT WATER ASSESSMENT FOR

1 GROUNDWATER PRODUCED IN 2016 AND 2017. THAT'S IT.
2 THAT'S THE ONLY ISSUE. THERE'S NOTHING IN THE JUDGMENT
3 THAT SAYS ONLY STIPULATING PARTIES GET THE BENEFIT OF
4 THAT 2016 AND 2017 EXEMPTION FROM REPLACEMENT WATER
5 ASSESSMENTS. THERE'S NOTHING IN THE JUDGMENT THAT SAYS
6 ONLY PARTIES WITH A PRODUCTION RIGHT GET THE BENEFIT OF
7 THE 2016/2017 EXEMPTION. THERE'S NOTHING IN THE
8 JUDGMENT THAT SAYS ONLY PARTIES WHO HAVE NOT CAUSED
9 QUOTE, UNQUOTE, HARM TO THE BASIN, WHICH IS NOT A
10 DEFINED TERM, ARE ELIGIBLE FOR THIS TWO-YEAR EXEMPTION
11 FROM REPLACEMENT WATER RIGHTS.

12 ALL OF THE PRODUCERS HAVE HARMED BASIN
13 OVERTIME, AND THERE'S BEEN NO FINDING THAT PHELAN HAS
14 CAUSED A MATERIAL INJURY, WHICH IS A DEFINED TERM OF THE
15 JUDGMENT, TO THE BASIN. THERE'S NOTHING IN THE JUDGMENT
16 THAT CONDITIONS THE EXEMPTION FROM REPLACEMENT WATER
17 ASSESSMENT FOR THESE TWO YEARS ON A PARTY NOT HAVING
18 CONTRIBUTED TO THE OVERDRAFT. ALL OF THE PRODUCERS
19 CONTRIBUTED TO THE OVERDRAFT; AND UNDER THE JUDGMENT,
20 ALL THE PRODUCERS NEVERTHELESS RECEIVED THIS TWO-YEAR
21 EXEMPTION FROM REPLACEMENT WATER ASSESSMENTS.

22 SO WE NEED TO FOCUS ON WHAT THAT'S ABOUT. NOW,
23 ONE OF THE THINGS THAT THE WATERMASTER HAS BROUGHT UP IN
24 ITS OPPOSITION IS THAT SPECIFIC PROVISIONS CONTROL OVER
25 GENERAL PROVISIONS, BUT THERE'S NOTHING SPECIFIC IN THE
26 JUDGMENT LIMITING THE APPLICATION OF THE TWO-YEAR
27 EXEMPTION FROM REPLACEMENT WATER ASSESSMENTS TO ANY
28 SUBCATEGORY OF PRODUCERS OR TAKING AWAY THAT EXEMPTION

1 FROM SOME SUBCATEGORY OF PRODUCERS. EVEN IN THE CONTEXT
2 OF CITING STATUTES THAT TALK ABOUT THE SPECIFIC
3 CONTROLLING OVER THE GENERAL, THE WATERMASTER HAS
4 DISTORTED ONE OF THOSE STATUTES. CODE OF CIVIL
5 PROCEDURE SECTION 1859, INSTEAD OF QUOTING THAT, IT'S
6 PARAPHRASED IN THE WATERMASTER'S OPPOSITION. THE
7 PARAPHRASE SAYS THAT THE SPECIFIC CONTROLS OVER THE
8 GENERAL WHERE THE TWO ARE ARGUABLY INCONSISTENT, BUT
9 WHAT THE STATUTE ACTUALLY SAYS IS THAT WHEN A GENERAL,
10 IN PARTICULAR, PROVISION ARE INCONSISTENT, THE LADDER IS
11 PARAMOUNT TO THE FORMER. ARE, NOT ARGUABLY.

12 THE FIRST QUESTION IS WHETHER THERE IS SOME
13 INCONSISTENCY, AND IN LIGHT OF THE FACT THAT THIS
14 SPECIFIC ISSUE REALLY HASN'T BEEN ADDRESSED, THERE'S NO
15 INCONSISTENCY. THE FACT THAT THE WATERMASTER HAD TO
16 PARAPHRASE THAT CODE OF CIVIL PROCEDURE PROVISION BY
17 ITSELF SUGGESTS THAT THEY'RE RECOGNIZING THERE REALLY
18 ISN'T AN INCONSISTENCY.

19 WHERE THE INCONSISTENCY LIES IS IN THE
20 ARGUMENTS MADE BY THE WATERMASTER AND THE PUBLIC WATER
21 SUPPLIERS, BECAUSE THEY'RE SAYING THAT THE PROVISION
22 STATING NO PRODUCER PAYS A REPLACEMENT WATER ASSESSMENT
23 FOR 2016 TO 2017 IS A GENERAL PROVISION THAT FALLS TO
24 MORE SPECIFIC PROVISIONS. THEY'RE ALSO SAYING THAT THE
25 TWO-YEAR EXEMPTION IS DEPENDENT ON A PARTY PUMPING WATER
26 THAT IT HAS A PRODUCTION RIGHT FOR, AND THEY'RE SAYING
27 SPECIFIC PROVISIONS CONTROL OVER THE GENERAL.

28 WELL, IF THAT'S THE CASE, IF THERE'S A PARTY

1 OTHER THAN PHELAN THAT HAS PUMPED MORE THAN IT'S
2 PRE-RAMP DOWN RIGHT IN 2016 AND 2017, THAT PARTY DOESN'T
3 GET THE BENEFIT OF THE TWO-YEAR EXEMPTION FROM
4 REPLACEMENT WATER ASSESSMENTS EITHER, BECAUSE THAT PARTY
5 HAS NO RIGHT. THEY HAVE NO RIGHT TO PUMP MORE THAN
6 THEIR PRE-RAMP DOWN RIGHT.

7 SO WHY ARE WE ONLY TALKING ABOUT PHELAN NOT
8 HAVING A PRODUCTION RIGHT, AND THEREFORE, IT DOESN'T GET
9 THE BENEFIT OF THIS EXEMPTION FROM REPLACEMENT WATER
10 ASSESSMENTS?

11 WE'VE SAID WHAT WE'VE SAID ABOUT DEFINITIONS IN
12 OUR PAPERS, AND I'M NOT GOING TO REPEAT THAT, BUT YOU
13 HAVE TO LOOK AT THE INCONSISTENCY IN THEIR ARGUMENTS IN
14 SAYING IF YOU DON'T HAVE A PRODUCTION RIGHT, YOU DON'T
15 GET THE BENEFIT OF THE EXEMPTION. WELL, IF THAT'S THE
16 CASE, THEN ANY OTHER PARTY THAT'S PRODUCED MORE THAN
17 THEIR PRE-RAMP DOWN RIGHT SHOULD BE PAYING A REPLACEMENT
18 WATER ASSESSMENT FOR 2016 AND 2017 AS WELL.

19 THERE'S AN ARGUMENT IN THE PUBLIC WATER
20 SUPPLIER'S OPPOSITION TO THE EFFECT THAT IF PHELAN
21 DOESN'T HAVE TO PAY A REPLACEMENT WATER ASSESSMENT, THEN
22 THERE'S NOTHING TO PREVENT THE TENS OF THOUSANDS OF
23 PARTIES IN THIS ACTION WHO HAVE NEVER PUMPED GROUNDWATER
24 FROM THE BASIN FROM DRILLING A WELL AND PUMPING
25 GROUNDWATER FREE OF A REPLACEMENT WATER ASSESSMENT FOR
26 TWO YEARS. IT'S A SILLY ARGUMENT FOR A VARIETY OF
27 REASONS.

28 FIRST OF ALL, THE INJUNCTION PROVISION IN THE

1 JUDGMENT WOULD PREVENT THAT.

2 SECOND OF ALL, AS THE PUBLIC WATER SUPPLIERS
3 THEMSELVES POINT OUT IN THE NEXT PARAGRAPH OF THEIR
4 OPPOSITION, SECTION 18.5.13 OF THE JUDGMENT REQUIRES A
5 NEW APPLICATION TO BE SUBMITTED TO THE WATERMASTER. BUT
6 MOST IMPORTANTLY, THE REASON THAT ARGUMENT IS SILLY IS
7 THAT THIS EXCEPTION APPLIES ONLY FOR 2016 AND 2017.
8 WE'RE ALREADY IN 2018. WE HAVE NOT HAD TENS OF
9 THOUSANDS OF PEOPLE COME IN AND START PUMPING WATER WHO
10 WOULD BE ABLE TO CLAIM THAT EXEMPTION FOR THOSE TWO
11 YEARS. IT'S A SILLY ARGUMENT.

12 THE OTHER THING THAT'S VERY INTERESTING IS THAT
13 NO AMOUNT FOR THIS REPLACEMENT WATER ASSESSMENT THAT THE
14 WATERMASTER WANTS TO IMPOSE ON PHELAN HAS BEEN SET. AND
15 EVERY TIME THERE'S A REFERENCE TO THAT REPLACEMENT WATER
16 ASSESSMENT THAT PHELAN HAS TO PAY AFTER 2017, IT REFERS
17 TO SECTION 9.2 IN THE JUDGMENT. IF YOU LOOK AT THE
18 LANGUAGE OF THAT SECTION, THERE'S REALLY NO WAY IT CAN
19 BE APPLIED TO PHELAN. THAT PROVISION SAYS, IN PART, THE
20 WATERMASTER SHALL IMPOSE THE REPLACEMENT WATER
21 ASSESSMENT ON ANY PRODUCER WHOSE PRODUCTION OF
22 GROUNDWATER FROM THE BASIN IN ANY YEAR IS IN EXCESS OF
23 THE SUM OF SUCH PRODUCER'S PRODUCTION RIGHT AND IMPORTED
24 WATER RETURN FLOW AVAILABLE IN THAT YEAR.

25 WELL, THE WATERMASTER AND THE PUBLIC WATER
26 SUPPLIERS ARE ARGUING PHELAN ISN'T A PRODUCER. SO IF
27 PHELAN ISN'T A PRODUCER, HOW DO YOU APPLY SECTION 9.2 TO
28 COME UP WITH A REPLACEMENT WATER ASSESSMENT FOR PHELAN?

1 WE HAVE THE WATERMASTER AND THE PUBLIC WATER SUPPLIERS
2 ARGUING PRODUCTION OF GROUNDWATER IS PREMISED ON HAVING
3 A WATER RIGHT. WELL, IF THAT'S THE CASE, PHELAN DOESN'T
4 HAVE A WATER RIGHT. SO, ONCE AGAIN, THE EFFORT TO
5 IMPOSE A REPLACEMENT WATER ASSESSMENT FOR PHELAN UNDER
6 9.2 DIES RIGHT THERE. PHELAN DOESN'T HAVE A PRODUCTION
7 RIGHT, SO THE EFFORT TO IMPOSE A REPLACEMENT WATER
8 ASSESSMENT ON PHELAN, AGAIN, DIES RIGHT THERE. SO ON
9 THE ONE HAND --

10 THE COURT: HOW DO YOU SQUARE THAT WITH 6.4.1.2?

11 MS. AILIN: YOU SQUARE THAT WITH 6.4.1.2 BY
12 READING THE DEFINITIONS FOR WHAT THEY SAY. A PARTY IS
13 ANY -- EXCUSE ME, A PRODUCER IS ANY PARTY THAT PRODUCES
14 GROUNDWATER. A PARTY IS ANYONE SUBJECT TO THIS
15 JUDGMENT, BUT THIS INTERNAL CONSISTENCY BETWEEN THIS
16 EFFORT TO IMPOSE A REPLACEMENT WATER ASSESSMENT FOR
17 YEARS THAT THE JUDGMENT SAYS NO ONE PAYS A REPLACEMENT
18 WATER ASSESSMENT FOR AND THE PROVISIONS ABOUT HOW YOU
19 FIGURE OUT WHAT THE ASSESSMENT IS IMPLY IT --

20 THE COURT: BUT 6.4.1.2 SPECIFICALLY REFERS TO
21 9.2.

22 MR. PARTON: RIGHT, THAT'S A PROBLEM. IT'S A
23 PRODUCT --

24 THE COURT: HOW DO YOU RATIONALIZE THAT?

25 MS. AILIN: I CAN'T RATIONALIZE IT. WHAT I CAN
26 SAY IS THAT 6.4.1.2 WAS DROPPED INTO THE PROPOSED
27 PHYSICAL SOLUTION AS A WAY TO TRY TO MAKE PHELAN GO
28 AWAY, AND NOBODY REALLY THOUGHT ABOUT HOW THAT WAS GOING

1 TO WORK WHEN THAT WAS DROPPED IN THERE.

2 THE COURT: I DON'T THINK ANYBODY EVER THOUGHT
3 PHELAN WAS GOING TO GO AWAY, FROM WHAT I CAN GATHER, AND
4 YOU'RE PROOF OF THAT. WHEN I LOOK AT THE TOTALITY OF
5 THIS JUDGMENT AND THE PHYSICAL SOLUTION THAT'S ADOPTED
6 BY THE JUDGMENT, AND WHEN I LOOK AT THE EVIDENCE THAT
7 WAS PRESENTED IN SUPPORT OF THE PHYSICAL SOLUTION AND
8 THE JUDGMENT AT OUR HEARING, WHICH WAS IN, I GUESS,
9 DECEMBER, THE THING THAT REALLY STOOD OUT IN MY MIND WAS
10 THAT THE TESTIMONY UPON WHICH THE COURT FOUND THAT THE
11 PHYSICAL SOLUTION WOULD WORK DID NOT INCLUDE ANY
12 REFERENCES TO ANY WATER THAT WAS EXTRACTED BY PHELAN.

13 THE STATEMENT OF DECISION ON -- THE PARTIAL
14 STATEMENT OF DECISION THAT THE COURT WROTE AFTER THE
15 PHELAN PHASE OF THE TRIAL FOUND THAT, IN FACT, PHELAN
16 HAD NO RIGHTS TO WATER IN THE VALLEY. IF IT PUMPED
17 WATER OUT, IT CLEARLY WOULD HAVE TO PAY BECAUSE IT HAD
18 NO OTHER RIGHT.

19 THE STIPULATION, THEN, THAT WAS ENTERED INTO --
20 I SHOULD SAY THE PHYSICAL SOLUTION SPECIFICALLY PROVIDED
21 FOR PHELAN TO HAVE THE ABILITY TO PUMP OUT ITS MAXIMUM,
22 AS LONG AS IT PAID FOR IT. THAT MADE A LOT OF SENSE TO
23 ME, NOT AS A WAY OF HAVING PHELAN LEAVE, I NEVER
24 EXPECTED THAT, BUT IT CERTAINLY GAVE YOU THE OPPORTUNITY
25 TO FRAME YOUR CLAIM THAT THE COURT WAS WRONG IN FINDING
26 THAT THERE WAS NO APPROPRIATIVE RIGHT THAT PHELAN HAD.
27 THERE'S NO QUESTION IN MY MIND BASED ON THE EVIDENCE
28 THAT WAS PRESENTED AND WHAT THE COURT FOUND THAT THERE

1 WAS NO SURPLUS AVAILABLE FOR PHELAN TO ACQUIRE AN
2 APPROPRIATIVE RIGHT IN THE AQUIFER INASMUCH AS IT WAS
3 ALL INTERCONNECTED.

4 IT DOES SEEM TO ME IF YOU LOOK AT THE WHOLE OF
5 THE PHYSICAL SOLUTION AND THE EVIDENCE THAT WAS PROVIDED
6 AND OFFERED TO JUSTIFY THE COURT'S ULTIMATE DECISION
7 THAT IT WAS AN APPROPRIATE PHYSICAL SOLUTION, YOU CAN'T
8 IGNORE THE FACT THAT THERE IS NO PRODUCTIVE RIGHT; THAT
9 PHELAN, IF IT DIDN'T PAY, WOULD BE CAUSING HARM TO THE
10 BASIN. I DON'T DISAGREE WITH YOU THAT EVERYBODY THAT
11 KEPT PUMPING IN 2016 AND 2017, IF THEY DID NOT REDUCE
12 THEIR PUMPING LEVELS WOULD CAUSE INJURY TO THE AQUIFER
13 BECAUSE IT ENHANCED OR CONTINUED THE OVERDRAFT AND
14 THAT'S TRUE OF PHELAN AS WELL. BUT BECAUSE PHELAN NEVER
15 HAD A RIGHT TO PUMP AND THERE WAS NEVER A DETERMINATION
16 AS TO THAT RIGHT BEING AVAILABLE TO PHELAN, PHELAN HAD
17 TO PAY FOR WHATEVER IT PUMPED, SO THAT AT LEAST THERE
18 WAS NO FURTHER HARM CREATED BY PHELAN'S PUMPING.

19 MS. AILIN: WELL, WE'LL HAVE A LOT MORE TO SAY
20 ABOUT MUCH OF THIS ON THE APPEAL. FOR PURPOSE OF THIS
21 ARGUMENT, I'LL TAKE THE JUDGMENT AS IT IS, BUT THE
22 COURT'S STATEMENT OF DECISION WAS FOCUSED ON WHETHER OR
23 NOT PHELAN HAD A WATER RIGHT, WHICH IS NOT THE ISSUE
24 HERE, AND IT WAS FOCUSED ON WHETHER THIS PHYSICAL
25 SOLUTION WOULD BRING THE BASIN INTO BALANCE.

26 THERE IS NO EVIDENCE IN THE RECORD THAT'S GOING
27 TO SUPPORT A CONCLUSION THAT IF PHELAN DOESN'T PAY A
28 REPLACEMENT WATER ASSESSMENT FOR TWO YEARS, THAT THAT

1 WILL PREVENT THE BASIN FROM COMING INTO BALANCE AT THE
2 END OF THE RAMP DOWN PERIOD. THERE IS A REAL PROBLEM, I
3 THINK, WITH SAYING THAT IN SECTION 6.4.1.2, PRODUCER
4 MEANS WHAT IT SAYS, ANY PARTY -- EXCUSE ME. THAT IN THE
5 CONTEXT OF 6.4.1.2, PRODUCER DOES NOT MEAN WHAT IT SAYS,
6 THAT ANY PARTY WHO PRODUCES GROUNDWATER IS A PRODUCER,
7 BUT IN SECTION 9.2, IT DOES MEAN THAT ANY PARTY WHO
8 PRODUCES GROUNDWATER IS A PRODUCER.

9 THE COURT: LET ME DISAGREE WITH YOU AS TO THE
10 EVIDENCE THAT DETERMINES WHETHER OR NOT PHELAN'S
11 CONTINUED PUMPING WITHOUT PAYING WOULD CAUSE DETRIMENT
12 AND PREVENT THE PHYSICAL SOLUTION FROM BEING SUCCESSFUL.
13 THE EVIDENCE FROM THE EXPERT'S UPON WHICH THE COURT
14 RELIED DID NOT INCLUDE ANY ADDITIONAL PUMPING FROM
15 PHELAN BEYOND WHAT IT REPLACED, SO THAT, IN FACT, THERE
16 IS EVIDENCE -- IT'S SLIGHT, IT'S NOT A HUGE AMOUNT,
17 OBVIOUSLY, 1,200 ACRE FEET A YEAR, BUT THERE'S NO
18 QUESTION IN MY MIND THAT THE EXPERT OPINION DID NOT
19 INCLUDE ANY PUMPING WITHOUT COMPENSATION BY PHELAN IN
20 ORDER TO ACHIEVE THE PHYSICAL SOLUTION AS IT WAS. NOW,
21 OBVIOUSLY, WE'RE NOT GOING TO SPLIT HAIRS, BUT I BELIEVE
22 THAT TO BE CORRECT.

23 MS. AILIN: THAT STILL DOESN'T ADDRESS THE
24 DEFINITIONAL PROBLEM RAISED BY THE LANGUAGE OF THE
25 JUDGMENT THAT FOR SOME PROVISION, PHELAN'S A PRODUCER;
26 FOR SOME OTHER PROVISION, PHELAN IS NOT A PRODUCER.
27 THAT'S GOING TO BE A LONG-TERM PROBLEM IF THAT'S THE
28 ROAD WE'RE GOING DOWN.

1 THE COURT: IT COULD BE, BUT I THINK THAT YOU
2 HAVE TO EXAMINE THE ENTIRETY OF THE JUDGMENT AND WHAT
3 IT'S BASED UPON IN ORDER TO DETERMINE WHO IS ENTITLED TO
4 THE BENEFIT OF TWO YEARS RAMP DOWN FREE NO WATER
5 REPLACEMENT.

6 INCIDENTALLY, DOES ANYBODY HAVE A NOTION ABOUT
7 WHAT THE ACTUAL COST TO PHELAN IS FOR 1,200 ACRE FEET?

8 MS. AILIN: THERE'S BEEN NO AMOUNT SET FOR THOSE
9 YEARS.

10 THE COURT: WELL, I UNDERSTAND THAT, BUT IS THERE
11 A BALLPARK NUMBER?

12 MS. AILIN: NO ONE'S EXPRESSED ONE TO ME.

13 MR. PARTON: THE WATERMASTER ENGINEER HAS NOT
14 CALCULATED ED THAT.

15 THE COURT: WELL, WHAT'S THE COST OF AN ACRE FOOT
16 OF WATER TODAY?

17 MR. PARTON: YOU KNOW, YOUR HONOR, I DON'T WANT
18 TO GUESS. I'M THINKING THE COST TO PHELAN FOR THOSE TWO
19 YEARS IS SOMEWHERE IN THE RANGE OF \$400,000.

20 THE COURT: HOW MUCH?

21 MR. PARTON: \$400,000.

22 MR. DUNN: YOUR HONOR, JEFFREY DUNN FOR DISTRICT
23 40. REPLACEMENT WATER, COST WE'RE TALKING ABOUT WHAT
24 THE AVEK WOULD PROVIDE IN TERMS OF REPLACEMENT WATER FOR
25 ANYONE IN THE BASIN, SO THAT PRICE IS SORT OF DETERMINED
26 BY AVEK AS IT SETS PRICES FOR STATE PROJECT WATER FOR
27 PEOPLE WHO WISH TO PURCHASE IT. I DON'T HAVE THAT
28 DOLLAR FIGURE, BUT MY POINT IS THAT AVEK HAS A WELL

1 ESTABLISHED PROCESS, IT'S PUBLIC, FOR DOING THAT. IT'S
2 NOT INTENDED TO SINGLE OUT ANY PARTICULAR USER. THIS IS
3 HOW MUCH REPLACEMENT WATER, WHICH IS BY STATE PROJECT
4 WATER, COST.

5 THE COURT: IT'S NOT ARBITRARY?

6 MR. PARTON: NO.

7 MR. DUNN: CORRECT.

8 THE COURT: IS THAT RIGHT?

9 MR. DUNN: THAT'S CORRECT.

10 MR. PARTON: THAT'S CORRECT.

11 THE COURT: MS. AILIN, IF YOU HAVE FURTHER
12 ARGUMENT, I'LL BE HAPPY TO HEAR IT.

13 MS. AILIN: I DON'T HAVE FURTHER ARGUMENT AT THIS
14 TIME.

15 THE COURT: OKAY. THEN LET ME HEAR FROM THE
16 OPPOSITION.

17 MR. PARTON: YOUR HONOR, WE THINK THE COURT IS
18 EXACTLY STATING THE GIST OF WHAT THIS ISSUE IS ABOUT.
19 THERE'S BEEN A SPECIFIC FINDING BY THIS COURT AFTER A
20 TRIAL THAT PHELAN EXPORTS ALL THEIR PRODUCTION OUTSIDE
21 THE BASIN'S BOUNDARIES; THAT IT'S MINING ITS PRODUCTION;
22 THAT IT NEEDS TO PAY A REPLACEMENT WATER ASSESSMENT FOR
23 ALL THE WATER THAT IT TAKES OUT OF THE BASIN. IT'S A
24 ONE-FOR-ONE ARRANGEMENT. WE UNDERSTAND THAT.

25 WE CAME TO THIS LATE AS WATERMASTER GENERAL
26 COUNSEL LOOKING AT ALL THE ISSUES BACK IN JANUARY AND
27 ISSUED A MEMO TO THE BOARD ON THE TOPIC OF PHELAN'S
28 REQUEST. THE BOARD THEN VOTED UNANIMOUSLY AND A

1 RESOLUTION TO HAVE US MOVE FORWARD WITH IMPOSING THE
2 REPLACEMENT WATER ASSESSMENT FOR 2016 AND 2017. NOW
3 WE'RE FINDING OUT THAT PHELAN THINKS THAT THEY HAVE
4 RIGHTS UNDER 8.3 OF THE JUDGMENT. WE THINK THAT'S
5 INCORRECT. THEY'VE ALREADY ADMITTED THEY HAVE NO
6 PRODUCTION RIGHT, THEY HAVE NO PRE-RAMP DOWN PRODUCTION
7 RIGHT.

8 UNDER THEIR LOGIC, THEY'RE SPLITTING UP 8.3
9 SAYING PART APPLIES TO THEM AND PART DOESN'T, BUT THE
10 LOGIC WOULD SEEM TO ME TO BE TIGHT THAT IF PHELAN WAS
11 CORRECT WITH RESPECT TO SECTION 8.3, THEY'D ALSO HAVE
12 PRE-RAMP DOWN PRODUCTION RIGHTS. THEY CAN RAMP DOWN
13 OVER SEVEN YEARS. THEY, OBVIOUSLY, ARE NOT SEEKING THAT
14 IN THIS MOTION, BUT WE THINK THERE'S A LOGICAL
15 INCONSISTENCY AS TO HOW THEY'RE APPLYING 8.3.

16 THE FACT IS THAT THE JUDGMENT WAS CLEAR THEY
17 HAD NO PRODUCTION RIGHT. THE JUDGMENT IS CLEAR THEY
18 HAVE NO PRE-RAMP DOWN PRODUCTION RIGHT. FOR NOW PHELAN
19 TO BACK UP AND AVOID THE IMPACT OF THIS COURT'S SPECIFIC
20 FINDING WITH RESPECT TO PHELAN'S ACTIVITIES IN THE BASIN
21 AND THE NEED TO REPLACE THAT WATER FOR AN ACRE FOOT IN,
22 ACRE FOOT OUT, WE THINK IS INAPPROPRIATE.

23 I'M GLAD THE COURT MENTIONED WITH RESPECT TO
24 WHAT THE FINDINGS WERE AT TRIAL WITH RESPECT TO THE
25 EXPERT TESTIMONY ON THE PHYSICAL SOLUTION. WE THINK
26 THAT'S ULTIMATELY CRITICAL AS WHAT THIS COURT WAS DOING
27 BACK IN DECEMBER TO TAKE EVIDENCE ON THIS VERY FACT,
28 THAT PHELAN'S PRODUCTION HAD TO HAVE REPLACEMENT WATER

1 IN ORDER TO KEEP THE BASIN IN A SUSTAINABLE CONDITION,
2 PARTICULARLY IN THE RAMP DOWN POSITION.

3 TO US THE COURT MADE THESE DETERMINATIONS IN
4 THE STATEMENT OF DECISION. THEY'RE CLEAR. ACTUALLY
5 FINDING THAT PHELAN'S PRODUCTION TAKES AWAY RECHARGE
6 FROM THE BASIN, IS ACTUALLY MINING WATER OUT OF THE
7 BASIN AND HAD TO PAY A REPLACEMENT WATER ASSESSMENT, AND
8 THE SPECIFIC PROVISION 6.4.1.2, WE THINK, IS PERFECTLY
9 CLEAR ABOUT WHAT THE BARGAIN WAS THAT PHELAN GOT OUT OF
10 THIS TRIAL.

11 PHELAN GETS TO CONDUCT THAT ACTIVITY, BUT
12 THERE'S A VERY SIMPLE EXCHANGE. THEY PAY FOR
13 REPLACEMENT WATER SO THAT THERE'S NO ULTIMATE HARM TO
14 THE BASIN. WE THINK THE COURT WAS VERY CLEAR IN TERMS
15 OF THE JUDGMENT AND ITS ORDER THIS PAST JANUARY 31ST OF
16 THE HEARING THAT WE HAD. IT SEEMS TO BE VERY CLEAR WHAT
17 THE COURT'S INTENTION WAS AND THAT'S WHY WE'RE HERE.

18 THE COURT: ONE OF THE THINGS THAT MOTIVATED THE
19 COURT TO APPROVE THE PROVISION THAT PERMITTED THE 1,200
20 ACRE FEET A YEAR -- UP TO 1,200 ACRE FEET A YEAR FOR
21 PAYMENT WAS THE RECOGNITION THAT PHELAN IS A PUBLIC
22 SERVICE. IT IS A PUBLIC ENTITY. AND TO IMMEDIATELY
23 DIRECT THAT THERE BE NO PUMPING OF THAT WATER TO BE SENT
24 OUT OF THE ADJUDICATION AREA WOULD HAVE VERY HARSH
25 PENALTY ON THE PUBLIC, SO THAT IT OCCURRED TO THE COURT
26 AT THE TIME EVEN THOUGH PHELAN WAS NOT A PARTY TO THE
27 STIPULATION, AND I DON'T KNOW WHAT NEGOTIATIONS THERE
28 WERE BETWEEN THE PARTIES THAT LED UP TO THAT SPECIFIC

1 PROVISION IN 6.4.1.2, BUT IT WAS VERY CLEAR TO THE COURT
2 THAT THAT WAS TO BE A VERY EXPRESSED CONDITION UPON THE
3 PUMPING OF WATER OUT OF THE AQUIFER ADJUDICATION AREA
4 AND THAT WAS THE REASON WHY THE COURT COULD JUSTIFY
5 APPROVING THAT SPECIFIC PROVISION AND FELT IT WOULD BE
6 VERY UNFAIR TO -- INEQUITY TO SUDDENLY CUT OFF THAT
7 SERVICE AREA FROM THE USE OF THAT WATER.

8 AGAIN, NOBODY PRESENTED ANY EVIDENCE AS TO WHAT
9 THE NEGOTIATIONS WERE HERE. I'VE HAD NO EXTRINSIC
10 EVIDENCE, NO PAROL EVIDENCE TO EXPLAIN HOW THAT CAME
11 ABOUT, BUT IT MADE SENSE TO THE COURT AS A REASONABLE
12 RESOLUTION.

13 THERE'S ALSO SOME LANGUAGE IN THE JUDGMENT
14 THAT -- AND I THINK IT'S ALSO IN THE PHYSICAL SOLUTION
15 THAT PROVIDES THAT IF A PARTY IS NOT, IN EFFECT,
16 SUPPORTING OR STIPULATING BUT, IN FACT, IS OBJECTING TO
17 THE JUDGMENT, THAT THE WATERMASTER MAY STILL PERMIT AN
18 ALLOCATION OF WATER TO THAT PERSON, BUT UNLESS THEY'RE A
19 STIPULATING PARTY, THEY DO NOT RECEIVE THE BENEFIT OF
20 THE PROVISIONS OF THE PHYSICAL SOLUTION WHICH BENEFITS
21 THOSE PARTIES WHO STIPULATED OR WHO SUPPORT IT.

22 SINCE PHELAN IS NEITHER OF THOSE, IT SEEMS TO
23 ME THAT NONE OF THE OTHER BENEFITS, WHICH WOULD INCLUDE
24 THE ASSESSMENT FREE RAMP DOWN PUMPING FOR THOSE TWO
25 YEARS SHOULD NOT BE AVAILABLE TO A NON-STIPULATING OR
26 NON-SUPPORTING PARTY.

27 ANYBODY LIKE TO ADDRESS THAT TO THE COURT?

28 MR. DUNN: I HAVE OTHER ARGUMENT TO ADDRESS.

1 THE COURT: I'M SURE YOU DO, MR. DUNN, BUT I'D
2 LIKE TO HAVE AN ANSWER TO THAT.

3 MR. DUNN: WELL, I THINK THE ANSWER TO THAT
4 QUESTION REALLY IS RESOLVED BY THE COURT-APPROVED
5 PHYSICAL SOLUTION, THE JUDGMENT.

6 THE PROBLEM FOR PHELAN IN THE ARGUMENTS THAT IT
7 PRESENTS TO THE COURT IS THAT EVEN IF THE COURT WERE TO
8 ACCEPT AS TRUE THE INTERPRETATION THAT PHELAN STRAINS TO
9 PROVIDE IN THE JUDGMENT -- IN OTHER WORDS, TO TREAT
10 ITSELF AS A PRODUCER OF SOMEONE WITH A RIGHT TO A RAMP
11 DOWN, THE PROBLEM FOR PHELAN IS THAT IT'S NOT LIKE ANY
12 OTHER PUBLIC WATER SUPPLIER PRODUCER OR FOR THAT MATTER,
13 REALLY ANY OTHER PARTY IN THE JUDGMENT. THE
14 DISTINGUISHING FACTOR IS FOUND, AS REFLECTED IN THE
15 STATEMENT OF DECISION, AND THAT IS, PHELAN EXPORTS ITS
16 GROUNDWATER FROM THE ADJUDICATION AREA.

17 THE PROBLEM FOR PHELAN IS THAT -- I THINK THIS
18 MATTER IS PERHAPS RESOLVED JUST BY LOOKING AT THE
19 JUDGMENT, 6.4, IN THE OPENING SENTENCE. WE TEND TO GO
20 QUICKLY DOWN TO 6.4.1.2, THE SUBSECTION THERE, BUT 6.4,
21 WITH THE LABEL INJUNCTION AGAINST TRANSPORTATION FROM
22 BASIN, THAT'S THE LABEL, IT BEGINS EXCEPT UPON FURTHER
23 ORDER OF THE COURT -- HERE'S THE LANGUAGE, EACH AND
24 EVERY PARTY, PARTY BEING THE DEFINED TERM. SO WHEREAS
25 PHELAN HERE EMPHASIZES IT WANTS TO BE CONSIDERED AS A
26 PARTY UNDER THE JUDGMENT, IT WANTS TO HAVE ALL THE
27 PROVISIONS THAT APPLY TO PARTIES IN THE JUDGMENT, AS
28 DEFINED HERE, APPLY TO IT. FAIR ENOUGH. 6.4 SAYS THAT

1 FOR EACH AND EVERY PARTY, AND THAT INCLUDES PHELAN, AND
2 I'M GOING TO SKIP OVER, IS ENJOINED AND RESTRAINED, AND
3 WE HAVE THOSE TERMS IN CAPITAL LETTERS, FROM
4 TRANSPORTING GROUNDWATER HEREAFTER PRODUCED AND AGAIN,
5 PHELAN WANTS THE BENEFIT OF THE TERM PRODUCER AND
6 PRODUCE, FAIR ENOUGH. FROM TRANSPORTING GROUNDWATER
7 HEREAFTER PRODUCED FROM THE BASIN TO AREAS OUTSIDE OF
8 THE BASIN EXCEPT AS PROVIDED FOR THE FOLLOWING.

9 THE FIRST POINT, I THINK, HAS TO BE MADE THAT
10 MY CLIENT OR ANY OTHER PARTY THAT'S A SIGNATORY TO THE
11 STIPULATION OR A PARTY TO THE JUDGMENT THAT CLAIMS A
12 RAMP DOWN AND PRODUCTION RIGHT BY VIRTUE OF THE
13 JUDGMENT, EVEN WHERE THERE'S NO DISPUTE ABOUT THAT RAMP
14 DOWN AND THAT PRODUCTION RIGHT, THAT PARTY IS STILL
15 NONETHELESS SUBJECT TO THIS PROVISION 6.4, WHICH
16 PROHIBITS EXPORT. IN OTHER WORDS, WHETHER YOU CLAIM A
17 RAMP DOWN RIGHT OR NOT, YOU STILL CANNOT EXPORT THE
18 WATER OUTSIDE THE BASIN. THAT'S THE RULE.

19 SO WHAT PHELAN, THEN, FACES IS THERE'S A
20 GENERAL PROHIBITION AGAINST EXPORTING, REGARDLESS OF
21 WHETHER YOU CAN RAMP DOWN OR NOT, REGARDLESS OF WHETHER
22 YOU CAN -- WHATEVER. WHAT WE DID, AS REFLECTED IN THE
23 JUDGMENT, IS THERE ARE LIMITED EXCEPTION TO THAT RULE
24 AND THEY'RE VERY SPECIFIC. IN PHELAN IS SPECIFICALLY
25 REFERENCED IN ITS OWN EXCEPTION TO THAT RULE, WHICH THE
26 COURT HAS NOTED AND THAT'S THE 6.4.1.2.

27 AS THE COURT HAS ALREADY RECOGNIZED, AS A
28 PUBLIC WATER SUPPLIER, WE DEEMED IT APPROPRIATE TO

1 PROVIDE THIS LIMITED EXCEPTION FOR PHELAN. IRONICALLY,
2 BECAUSE IT'S BETTER THAN A RAMP DOWN. PHELAN ORDINARILY
3 WOULD BE PROHIBITED FROM EXPORTING THE WATER AS IT DOES
4 FROM THE BASIN. THE JUDGMENT CREATES AN EXCEPTION FOR
5 THEM. IT GIVES THEM THEIR FULL AMOUNT OF PRODUCTION,
6 THE 1,200 ACRE FEET PER YEAR AS LONG AS IT DOESN'T CAUSE
7 MATERIAL INJURY AND AS LONG AS THEY PAY REPLACEMENT
8 ASSESSMENT.

9 THE REASON WHY THAT'S BETTER THAN A RAMP DOWN
10 IS BY DEFINITION A RAMP DOWN WOULD TAKE -- IF PHELAN HAD
11 A RAMP DOWN, WHICH THEY DON'T BECAUSE THEY EXPORT. THEY
12 WOULD ULTIMATELY HAVE TO RAMP DOWN TO ZERO, LEAVING THEM
13 AT THE END OF THE RAMP DOWN PERIOD WITH NO RIGHT, ZERO
14 WATER TO PRODUCE FROM THE BASIN AND TO EXPORT. THEY
15 WOULD BE COMPLETELY BARRED AND PROHIBITED UNDER THIS
16 GENERAL EXPORT PROVISION. IRONICALLY, THIS PROVISION IS
17 GENEROUS TO PHELAN BECAUSE IT ALLOWS THEM WITHOUT HAVING
18 TO RAMP DOWN EVEN AFTER TWO YEARS OR ONE, THREE YEARS,
19 WHENEVER, THEY COULD IMMEDIATELY CONTINUE TO PUMP
20 WITHOUT ANY REDUCTION IN PUMPING, EXPORT THAT WATER, AS
21 LONG AS THEY PAID THE REPLACEMENT ASSESSMENT.

22 WE CONTINUE TO PRESENT TO THE COURT THAT THIS
23 PROVISION WAS MORE BENEFICIAL, IT WAS EQUITABLE, AND IT
24 BENEFITS PHELAN EVEN BETTER THAN THE RAMP DOWN
25 REPLACEMENT EXEMPTION THEY'RE TRYING TO ARGUE IN COURT
26 TODAY. BUT GOING BACK TO ALL OF THIS, THERE'S NO
27 INCONSISTENCY HERE, WHETHER IT'S MY CLIENT, DISTRICT 40,
28 OR ONE OF THE PRIVATE ENTITIES WHO HAS A CLEARLY

1 RECOGNIZED RAMP DOWN AND FREE FROM REPLACEMENT
2 ASSESSMENT. WE CAN'T TAKE WHAT WE PRODUCE AND EXPORT IT
3 OUT, AND NEITHER CAN PHELAN EXCEPT UNDER THE TERMS OF
4 THE JUDGMENT HERE. IT'S CLEAR. IT SAYS YOU CAN ONLY DO
5 THAT IF IT DOESN'T CAUSE MATERIAL INJURY AND YOU PAY THE
6 REPLACEMENT ASSESSMENT.

7 I SUBMIT TO THE COURT THAT THAT IS THE PROPER
8 WAY TO INTERPRET THIS AGREEMENT AND NOT TO NECESSARILY
9 WEIGH INTO THE, ARE THEY A PRODUCER OR -- THEY'RE A
10 PARTY, AND JUST LIKE EVERY OTHER PARTY IN THE CASE,
11 THEY'RE SUBJECT TO THIS PROHIBITION AGAINST EXPORTATION,
12 EXCEPT THEY GOT SOMETHING VERY BENEFICIAL. SO THEY
13 CANNOT ESCAPE -- THIS IS THE PROBLEM WE'VE HAD FROM
14 PHELAN FROM DAY ONE IS THAT IN EVERY PHASE OF THE TRIAL
15 THEY'RE LOOKING FOR SOME WAY TO CONTINUE TO EXPORT WATER
16 FROM THE ADJUDICATION AREA AND TO DO SO WITHOUT PAYING
17 FOR IT.

18 THE PARTIAL STATEMENT OF DECISION REFLECTS THAT
19 THE EXPORTING OF THAT WATER INTERCEPTS WATER THAT WOULD
20 OTHERWISE GO TO THE BASIN. IT'S HARMFUL, THE COURT
21 SAYS, PARTICULARLY TO THE SUBBASIN AREA, AND THAT UNDER
22 JUST GENERAL PRINCIPLES, WHETHER IT'S AN OVERDRAFT
23 CONDITION, YOU WOULDN'T WANT ANY EXPORT OF WATER OUTSIDE
24 YOUR BASIN.

25 HERE, WE RECOGNIZE THAT THEY WERE PUBLIC WATER
26 SUPPLIER. WE DIDN'T WANT TO CUT OFF THEIR ABILITY TO
27 PUMP, BUT THE JUDGMENT IMPOSES A REPLACEMENT ASSESSMENT,
28 AND I SUBMIT THAT'S VERY FAIR, MORE FAIR THAN PERHAPS

1 THEY'RE ENTITLED TO, TO BE HONEST WITH YOU.

2 THE COURT: COUNSEL?

3 MR. SERPA: BRIEFLY, YOUR HONOR. MANUEL SERPA ON
4 BEHALF OF LITTLE ROCK CREEK, PALM RANCH, AND QUARTZ
5 HILL. WE APPRECIATE THAT PHELAN WILL TAKE THE JUDGMENT
6 AS IT IS. THAT'S WHAT THEY'VE DONE THE TIMING OF THIS
7 MOTION COMES AFTER THE COURT'S ORDER IN FEBRUARY.
8 THEY'RE NOW SEEKING TO EXPLOIT WHAT WE CONTEND IS A
9 MISINTERPRETATION OF THE COURT'S STATEMENTS ON WHAT A
10 PARTY IS IN A DIFFERENT CONTEXT. THEY'RE TRYING TO
11 LATCH ON TO THAT TO CREATE AN EXCEPTION THAT DOESN'T
12 EXIST AND WASN'T CREATED BY THE JUDGMENT, NOR SHOULD IT.

13 PHELAN IS SUBJECT TO THE EXPLICIT EXCEPTION FOR
14 GROUNDWATER BASIN EXPORTATION OF WATER. THAT'S WHAT THE
15 JUDGMENT PROVIDES THEM. IT DOES NOT PROVIDE THEM WITH
16 THE RIGHT TO BENEFIT FROM THE ADJUSTMENT OR THE NEED TO
17 ADJUST OR TRANSITION THAT A RAMP DOWN RIGHT GIVES.
18 THEIR RIGHTS IS VERY EXPLICIT. IT'S OUR POSITION THAT
19 THEY'RE ONLY NOW SEEKING TO MISINTERPRET THE COURT'S
20 FEBRUARY 18TH ORDER TO THEIR BENEFIT IN A MANNER THAT'S
21 INCONSISTENT WITH THE JUDGMENT.

22 THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER,
23 MS. AILIN?

24 MS. AILIN: YES, YOUR HONOR. WE HAVE GONE
25 DRAMATICALLY FAR AFIELD FROM THE BASIC CONCEPT THAT WHEN
26 YOU ARE LOOKING AT A DOCUMENT AND INTERPRETING IT, WHAT
27 YOU'RE LOOKING AT IS THE LANGUAGE OF THAT DOCUMENT
28 UNLESS IT'S AMBIGUOUS, WHICH NO ONE HERE HAS ARGUED.

1 WE'RE CREATING A SITUATION WHERE NO ONE CAN EVER
2 UNDERSTAND THIS JUDGMENT BECAUSE, OH, WE HAVE TO GO BACK
3 AND READ 15 YEARS WORTH OF TRIAL TRANSCRIPTS AND SEVEN
4 OR EIGHT STATEMENTS OF DECISION. THAT'S NOT HOW THIS
5 JUDGMENT IS INTENDED TO BE INTERPRETED. IT'S INTENDED
6 TO BE INTERPRETED ON ITS LANGUAGE.

7 MR. PARTON TALKS ABOUT AN OPINION THAT WAS THE
8 BASIS FOR THE BOARD'S RESOLUTION. I FIND IT FASCINATING
9 THAT THAT OPINION WASN'T ATTACHED TO THE RESOLUTION AS
10 AN EXHIBIT AND THAT MR. PARTON DID NOT MAKE THAT OPINION
11 AN EXHIBIT TO HIS PAPERS. SO WE'RE REALLY IN A
12 SITUATION WHERE WE DON'T REALLY KNOW -- THE COURT
13 DOESN'T KNOW WHAT THE BOARD BASED ITS DECISION ON.

14 THE COURT: WELL, IT'S NOT UP TO THE BOARD. IT'S
15 UP TO ME.

16 MS. AILIN: THERE WAS A REFERENCE TO PHELAN
17 CLAIMING RIGHTS UNDER 8.3. THAT'S AN EXAGGERATION,
18 BECAUSE WE'RE NOT ASKING FOR A RAMP DOWN RIGHT. WE'RE
19 FOCUSED ON THE FIRST SENTENCE OF 8.3. THERE'S ALSO BEEN
20 SOME REFERENCE -- SOME STATEMENTS HERE GIVING
21 SIGNIFICANCE TO HEADINGS IN THE JUDGMENT. WELL, WE HAVE
22 SECTION 20.10 OF THE JUDGMENT -- EXCUSE ME, 20.12 OF THE
23 JUDGMENT THAT SAYS THOSE HEADINGS ARE JUST FOR
24 REFERENCE, THEY DON'T HAVE MEANING, SO LET'S KEEP THAT
25 IN MIND.

26 THE REFERENCE TO PHELAN MINING WATER, AS
27 MR. DUNN ADMITTED, PHELAN IS NOT THE ONLY ONE DOING
28 THAT. THERE ARE OTHER PARTIES EXPORTING WATER FROM THE

1 BASIN. NO ONE IS SAYING THOSE OTHER PARTIES, BECAUSE OF
2 THEIR EXPORT, HAVE TO PAY A REPLACEMENT WATER ASSESSMENT
3 FOR 2016 AND 2017.

4 THE COURT: THOSE PARTIES, HOWEVER, HAVE A
5 PRODUCTION RIGHT, DON'T THEY?

6 MS. AILIN: THEY DO, BUT IF THE ISSUE IS
7 EXPORT --

8 THE COURT: AND THEY HAVE NO OBLIGATION TO PAY
9 ONE PENNY FOR THEIR PRODUCTION RIGHT AS ITS REDUCED OVER
10 THAT PERIOD OF SEVEN YEARS, TRUE?

11 MS. AILIN: THAT'S ALSO TRUE, BUT IF THEY PRODUCE
12 MORE --

13 THE COURT: THAT'S DIFFERENT -- AND THAT'S
14 DIFFERENT THAN PHELAN'S RIGHT, ISN'T IT?

15 MS. AILIN: IT'S DIFFERENT THAN PHELAN'S RIGHT,
16 BUT THEY HAVE NO RIGHT TO PRODUCE MORE THAN THEIR
17 INTERIM RAMP DOWN, AND NO ONE IS SAYING IF THEY DO
18 PRODUCE MORE THAN THEIR INTERIM RAMP DOWN, THEY DO NOT
19 GET THE BENEFIT OF THE TWO-YEAR EXEMPTION FROM
20 REPLACEMENT WATER ASSESSMENTS. SO IF THE ISSUE IS NOT
21 HAVING A RIGHT, IF THE ISSUE IS HARM TO THE BASIN, IF
22 THE ISSUE IS ANYTHING OTHER THAN ARE YOU A PARTY, ARE
23 YOU A PRODUCER, HOW IS ANYONE TO UNDERSTAND THIS
24 JUDGMENT?

25 THE COURT: WELL, I THINK YOU'RE CHERRY-PICKING
26 LANGUAGE FROM THE JUDGMENT IN ORDER TO JUSTIFY YOUR
27 POSITION. I DON'T HAVE A PROBLEM WITH YOUR DOING THAT.
28 IT'S AN ARGUMENT, AND IT IS NOT AT THIS POINT PERSUASIVE

1 TO ME BECAUSE YOU'RE NOT LOOKING AT THE ENTIRE JUDGMENT
2 AS A WHOLE. THE WHOLE PURPOSE IN CREATING THE RAMP DOWN
3 PROCESS, AND 8.3 IS PART OF THE RAMP DOWN PROCESS, AND
4 THERE IS NO RAMP DOWN SO FAR AS PHELAN IS CONCERNED.
5 PHELAN HAS NO ABSOLUTE RIGHT TO PUMP WATER FOR USE
6 OUTSIDE THE VALLEY, AND THAT'S WHAT THEY'RE DOING RIGHT
7 NOW. THAT'S WHY THE PROVISION IS THERE, FOR THEM TO PAY
8 FOR THE WATER THEY EXTRACT, BECAUSE IT DOES HARM THE
9 AQUIFER, UNLESS THE WATER IS REPLACED AND THAT'S THE
10 PURPOSE OF THE REPLACEMENT WATER ASSESSMENT.

11 MS. AILIN: AND IT'S A DROP IN THE BUCKET
12 COMPARED TO WHAT EVERYBODY ELSE IS PUMPING RIGHT NOW AND
13 NOT PAYING REPLACEMENT WATER ASSESSMENT FOR.

14 THE COURT: THAT MAY BE, AND YOUR ARGUMENT ISN'T
15 THAT IT'S NOT MATERIAL. YOUR ARGUMENT IS THAT THEY
16 SHOULD BE ENTITLED TO PUMP FOR TWO YEARS WITHOUT PAYING,
17 BUT THERE'S NO QUESTION IN THE COURT'S MIND THAT THAT
18 PUMPING CAUSES DETRIMENT, UNLESS IT'S PAID FOR SO THAT
19 IT CAN BE REPLACED. I LOOK AT IT AS A ONE-FOR-ONE
20 SITUATION. YOU TAKE OUT AN ACRE FOOT OF WATER, YOU PAY
21 FOR THE REPLACEMENT OF THAT ACRE FOOT OF WATER. THE MAX
22 IS 1,200 ACRE FEET PER YEAR, BUT THERE'S NO QUESTION
23 THAT UNLESS THAT REIMBURSEMENT OCCURS SO THAT THE
24 FURTHER THE WATER CAN BE REPLACED, THERE IS FURTHER
25 DETRIMENT TO THE AQUIFER. I DON'T THINK -- YOU'RE
26 CERTAINLY NOT ARGUING THAT YOU DON'T HAVE TO PAY SO LONG
27 AS THE JUDGMENT IS IN PLACE IN ANY EVENT FOR THE YEARS
28 AFTER 2017.

1 MS. AILIN: THAT'S CORRECT. WE'RE NOT ARGUING
2 THAT.

3 THE COURT: AND I THINK THAT KIND OF EXEMPLIFIES
4 WHY YOU SHOULD NOT BE RELIEVED OF THE OBLIGATION TO PAY
5 FOR THE PREVIOUS TWO YEARS. IN ANY EVENT --

6 MS. AILIN: WE'RE LEFT WITH A SITUATION THAT WE
7 DON'T KNOW WHEN WE'RE A PRODUCER AND WHEN WE'RE NOT,
8 BECAUSE THE COURT IS SAYING WE'RE NOT A PRODUCER FOR
9 PURPOSES OF THE FIRST SENTENCE OF SECTION 8.3, BUT WE
10 ARE FOR SECTION 9.2.

11 THE COURT: WELL, YOU'RE NOT PUMPING FOR THE
12 REASONABLE BENEFICIAL USE OF THE AQUIFER. THERE'S NO
13 QUESTION ABOUT THAT. YOU'RE PUMPING FOR THE USE OF YOUR
14 SERVICE AREA, WHICH IS OUTSIDE THE ADJUDICATION AREA.

15 MS. AILIN: WHICH JUST HIGHLIGHTS ONE OF THE
16 PROBLEMS WITH THE JUDGMENT, WHICH IS IGNORING
17 HYDROGEOLOGIC BOUNDARIES, BUT THAT'S NOT A QUESTION FOR
18 TODAY.

19 THE COURT: WELL, I WORRY ABOUT THAT.

20 MS. AILIN: SO DO I.

21 THE COURT: BUT THERE'S NOTHING I CAN DO ABOUT
22 THAT. IF THERE WERE, I MIGHT. IN ANY EVENT, IS THERE
23 ANY FURTHER ARGUMENT?

24 MR. PARTON: NO.

25 THE COURT: MR. BUNN, YOU WANT TO BE HEARD IN
26 THIS MATTER?

27 MR. BUNN: JUST ON ONE MINOR POINT, YOUR HONOR.
28 THOMAS BUNN, B-U-N-N, APPEARING FOR PALMDALE WATER

1 DISTRICT. I JUST WANTED TO ANSWER AT LEAST IN MY MIND A
2 QUESTION ASKED BY THE COURT, AND THAT WAS WITH REFERENCE
3 TO THE PROVISION OF THE JUDGMENT THAT TALKS ABOUT
4 NON-STIPULATING PARTIES.

5 THE COURT: 5.1. --

6 MR. BUNN: POINT 10. THAT PROVISION SAYS -- I'LL
7 JUST READ PART OF THE SENTENCE. IT SAYS, "SHOULD THE
8 COURT, AFTER TAKING EVIDENCE, RULE THAT A
9 NON-STIPULATING PARTY HAS A PRODUCTION RIGHT, THE
10 NON-STIPULATING PARTY SHALL BE SUBJECT TO ALL PROVISIONS
11 OF THIS JUDGMENT, INCLUDING REDUCTION IN PRODUCTION
12 NECESSARY TO IMPLEMENT THE PHYSICAL SOLUTION AND THE
13 REQUIREMENTS TO PAY ASSESSMENTS, BUT SHALL NOT BE
14 ENTITLED TO BENEFITS PROVIDED BY STIPULATION."

15 THAT SENTENCE DOES NOT LITERALLY APPLY BECAUSE
16 THE COURT DID NOT RULE THAT PHELAN HAD A PRODUCTION
17 RIGHT, BUT NEVERTHELESS, I THINK THE CONCEPT THAT A
18 PARTY WHO DID NOT SIGN THE STIPULATION IS NOT ENTITLED
19 TO THE BENEFIT OF THE STIPULATION IS CLEARLY EXPRESSED
20 IN THAT SENTENCE AND THAT'S AN ADDITIONAL REASON FOR THE
21 COURT TO RULE THAT --

22 THE COURT: I WAS HOPING SOMEBODY WOULD AGREE
23 WITH ME. ALL RIGHT. THANK YOU, MR. BUNN.

24 MR. PARTON: THANK YOU, YOUR HONOR.

25 MR. BUNN: THANK YOU, YOUR HONOR.

26 THE COURT: ALL RIGHT. IS THERE ANYBODY ON
27 COURTCALL WHO WISHES TO BE HEARD?

28 IS THERE ANYBODY ON COURTCALL? OKAY. ALL

1 RIGHT. SO THE MATTER WILL BE ORDERED SUBMITTED.

2 MR. PARTON: THANK YOU, YOUR HONOR.

3 MR. SERPA: THANK YOU, YOUR HONOR.

4 THE COURT: IS THERE ANYTHING ELSE FOR US TO DO
5 HERE THIS MORNING?

6 MR. PARTON: NO, WE HAVE TWO MOTIONS ON FOR APRIL
7 30TH.

8 THE COURT: THE 30TH, YES.

9 MR. PARTON: YEP.

10 THE COURT: OKAY.

11 MR. PARTON: THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU VERY MUCH EVERYBODY. WE'RE
13 IN RECESS.

14 (CONCLUSION OF THE PROCEEDINGS.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 31

HON. JACK KOMAR, JUDGE

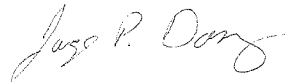
ANTELOPE VALLEY GROUNDWATER CASES.

NO. JCCP4408

REPORTER'S
CERTIFICATE

I, JORGE P. DOMINGUEZ, OFFICIAL PRO TEMPORE
REPORTER OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 27,
INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN DEPARTMENT 31 ON
APRIL 18, 2018, IN THE MATTER OF THE ABOVE-ENTITLED
CAUSE.

DATED THIS 1ST DAY OF MAY, 2018.



JORGE P. DOMINGUEZ, CSR NO. 12523
OFFICIAL PRO TEMPORE REPORTER

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ANTELOPE VALLEYGROUNDWATER CASES
Judicial Council Coordination Proceeding No. 4408

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 May 29, 2018, I served the within document(s) described as **APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)** 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 May 29, 2018, at El Segundo, California



Judy C. Carter

**ANTELOPE VALLEY WATERMASTER
ELECTRONIC DOCUMENT SERVICE - WWW.AVWATERMASTER.ORG**

c/o Glotrans
2915 McClure Street
Oakland, CA94609
EMAIL: Support@Glotrans.com

**ANTELOPE VALLEY WATERMASTER
IN AND FOR ANTELOPE VALLEY, CALIFORNIA**

Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES (JCCP 4408) Included Actions: Los Angeles County Waterworks District No. 40	)	Antelope Valley Groundwater Cases (JCCP 4408)
)	
	)	Lead Case No.1-05-CV-049053
)	
Plaintiff,	)	Hon. Jack Komar
vs.)	
)	
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)	
)	
Defendant.)	
)	
<hr/> AND RELATED ACTIONS<hr/>	)	PROOF OF SERVICE Electronic Proof of Service

I am employed in the County of Alameda, State of California.

I am over the age of 18 and not a party to the within action; my business address is 2915 McClure Street, Oakland, CA 94609.

The documents described on page 2 of this Electronic Proof of Service were submitted via the worldwide web on Tue. May 29, 2018 at 1:49 PM PDT and served by electronic mail notification.

I have reviewed the Court's Order Concerning Electronic Filing and Service of Pleading Documents and am readily familiar with the contents of said Order. Under the terms of said Order, I certify the above-described document's electronic service in the following manner:

The document was electronically uploaded to the Antelope Valley Watermaster's website, <http://www.avwatermaster.org>, on Tue. May 29, 2018 at 1:49 PM PDT .

An electronic mail message was transmitted to all parties on the electronic service list maintained for this case at www.avwatermaster.org. The message identified the document and provided instructions for accessing the document on the worldwide web.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 29, 2018 at Oakland, California.

Dated: May 29, 2018

For WWW.AVWATERMASTER.ORG

Andy Jamieson

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ANTELOPE VALLEY WATERMASTER DOCUMENTS
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Electronic Proof of Service
Page 2

Document(s) submitted by June Ailin of Aleshire & Wynder, LLP on Tue. May 29, 2018 at 1:49 PM PDT

1. Ntc of...: APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 18881 Von Karman Avenue, Suite 1700, Irvine, CA 92612.

On May 6, 2021, I served true copies of the following document(s) described as **APPELLANT'S APPENDIX** on the interested parties in this action as follows:

BY TRUEFILING (EFS): I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling portal operated by ImageSoft, Inc. Participants in the case who are registered EFS users will be served by the TrueFiling EFS system. Participants in the case who are not registered TrueFiling EFS users will be served by mail or by other means permitted by the court rules.

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

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

Executed on May 6, 2021, at Irvine, California.

/s/ Linda Yarvis
Linda Yarvis