DECLARATIONS

- A. Declaration of William J. Brunick
- B. Declaration of Robert G. Kuhs
- C. Declaration of Michael D. McLachlan
- D. Declaration of William M. Sloan
- E. Declaration of Richard G. Zimmer

1 2 3	William J. Brunick, Esq. [SB No. 46289] Leland P. McElhaney, Esq. [SB No. 39257] BRUNICK, McELHANEY & KENNEDY 1839 Commercenter West San Bernardino, California 92408	
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7	Attorneys for Cross-Complainant, ANTELOPE VALLEY-EAST KERN WATE	ER AGENCY
9	SUPERIOR COURT OF T	HE STATE OF CALIFORNIA
10	FOR THE COUNTY OF LOS A	NGELES – CENTRAL DISTRICT
11 12	Coordination Progenting	Judicial Council Coordination Proceeding
L2	Coordination Proceeding Special Title (Rule 1550(b))	No. 4408
L4	ANTELOPE VALLEY GROUNDWATER CASES	Santa Clara Case No. 1-05-CV-049053 The Honorable Jack Komar, Dept.17
L5		DECLARATION OF WILLIAM J.
L6	Included Actions:	BRUNICK IN SUPPORT OF REPLY TO PUBLIC WATER SUPPLIERS'
L7	Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company, a corporation, Superior Court of California,	OPPOSITION TO MOTION BY PRIVATE AND PUBLIC
L8 L9	County of Los Angeles, Case No. BC325201;	LANDOWNERS FOR ORDER APPROVING RULES & PROCEDURES FOR APPOINTMENT AND ELECTION
20	Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company, a	OF WATERMASTER BOARD MEMBERS
21	corporation., Superior Court of California, County of Kern, Case No. S-1500-CV-254-	
22	348;	
23	Wm. Bolthouse Farms, Inc. vs. City of Lancaster, Diamond Farming Company, a corporation, vs. City of Lancaster, Diamond	Date: September 8, 2016 Time: 10:00 a.m.
24	Farming Company, a corporation vs. Palmdale Water District, Superior Court of	Room: Room 222, Los Angeles Judge: Hon. Jack Komar
25	California, County of Riverside, Case Nos. RIC 353840, RIC 344436, RIC 344668.	
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DECLARATION OF BILL BRUNICK IN SUPPORT OF REPLY OF PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES & PROCEDURES FOR APPOINTMENT AND ELECTION OF WATERMASTER BOARD MEMBERS

WILLIAM J. BRUNICK declares and states:

- 1. I am an attorney at law duly licensed to practice before all courts of the State of California, and counsel of record in these coordinated proceedings for cross-complainant, Antelope Valley East Kern Water Agency (AVEK). I have personal knowledge of all of the matters set forth below and, if called as a witness, I could and would testify competently thereto.
- 2. Since 2006, I have been actively engaged in these coordinated proceedings, representing AVEK. I also was involved in virtually all of the settlement discussions, including those mediated by Justice Robie, which ultimately culminated in almost all parties stipulating to the proposed Judgment and Physical Solution that was ultimately approved and entered by the Court in December, 2015.
- 3. During the settlement negotiations, the Public Water Suppliers and the private and public landowners manifested clearly divergent interests. Among other things, the Public Water Suppliers were then pursuing prescription claims against virtually all of the landowners, and an almost complete lack of trust between the appropriators and the landowners was clearly evident.
- 3. Much of the discussion and negotiations related to the composition and powers of the Watermaster. The landowners demanded representation on the Watermaster Board. That demand was one of the key points of discussion and negotiation, with all stipulating parties ultimately agreeing that a balance of voting power on the Watermaster Board between the appropriators and the landowners was appropriate.
- 4. As a result, the parties finally agreed that the landowners (other than public agencies and members of the two Classes) would be assigned two seats on the Watermaster Board, with the Public Water Suppliers being assigned an equal number of seats, and AVEK being assigned the fifth seat on the Board. The landowners clearly stated they would not agree to a settlement without assurance they would be assigned two seats on the 5-member Watermaster Board.
- 5. In my presence during these negotiations, no representative of the Public Water Suppliers ever stated, hinted, suggested or requested that, in the event of a transfer of a landowner water right to a PWS, the purchasing PWS should then be able to vote in the election for the landowner

seats on the Watermaster Board. To my knowledge, the first time any PWS manifested any claimed right to vote in an election for the landowner seats was when the PWS recently announced their intention to file an Opposition to the landowners' pending motion for approval of proposed rules and procedures for appointment/election of representatives to the Watermaster Board.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 30, 2016, in San Bernardino, California.

William J. Brunick

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6		
7	Attorneys for Tejon Ranchcorp and Tejon Ranch C	ompany
8	SUPERIOR COURT OF THE S	TATE OF CALIFORNIA
9	SCIERIOR COURT OF THE	STATE OF CALIFORNIA
	COUNTY OF LOS ANGELES	S - CENTRAL DISTRICT
10		
11	ANTELOPE VALLEY GROUNDWATER CASES	Judicial Council Coordination No. 4408
12		Santa Clara Case No. 1-05-CV-049053
13	Included Actions: Los Angeles County Waterworks District No. 40	Assigned to Hon. Jack Komar
14	v. Diamond Farming Co., Superior Court of	
15	California, County of Los Angeles, Case No. BC 325201;	DECLARATION OF ROBERT G. KUHS IN SUPPORT OF REPLY TO
16		PUBLIC WATER SUPPLIERS'
17	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of	OPPOSITION TO MOTION BY PRIVATE AND PUBLIC
18	California, County of Kern, Case No. S-1500-CV-	LANDOWNERS FOR ORDER
	254-348;	APPROVING RULES & REGULATIONS FOR
19	Wm. Bolthouse Farms, Inc. v. City of Lancaster,	APPOINTMENT AND ELECTION
20	Diamond Farming Co. v. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior	OF WATERMASTER BOARD MEMBERS
21	Court of California, County of Riverside, Case	D. 4. G. 4 1 9. 2016
22	No. RIC 353 840, RIC 344 436, RIC 344 668	Date: September 8, 2016 Time: 9:00 a.m.
23		Dept: Room 222, LASC
24		Judge: Jack Komar, Presiding
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I, ROBERT G. KUHS, declare:

- 1. I am an attorney licensed to practice in the State of California and the owner of Kuhs & Parker, counsel for Tejon Ranchcorp. and Granite Construction Company. I have been involved in this case since 2008. I am very familiar with the case and all matters leading up to the Stipulation for Judgment and Physical Solution. I am also familiar with the terms negotiated, the arguments made by the parties in support of their respective positions, the terms of the ultimate agreement and the stated intentions of the parties regarding the agreement. I make this Declaration based upon personal knowledge.
- 2. The Judgment and Physical Solution (**Judgment**) was negotiated over several years. Because the Public Water Suppliers (**PWS**) asserted prescriptive claims, negotiations typically involved the PWS on one side of an issue, and landowners with overlying rights on the other side of the issue. AVEK and the United States typically had their own unique perspectives.
- 3. One of the main areas of controversy was the composition of the Watermaster Board. The PWS initially wanted to control the Watermaster Board. That demand was flatly rejected by the landowners. In order to settle the case, the landowners demanded equal representation on the Watermaster Board to create a balance of voting power. These negotiations culminated in the current five member Watermaster Board consisting of two PWS representatives, two Exhibit 4 non-public landowner representatives, and AVEK as the fifth board member.
- 4. In opposition to the current motion the PWS now assert for the first time the right to purchase water rights from landowners on Exhibit 4 and then participate in voting for the two landowner Watermaster representatives. The PWS's argument fails for the legal reasons set forth

in the reply brief filed herewith and because the argument runs contrary to the spirit and intent of the settling parties and the Judgment and is contrary to the settlement discussions leading up to the Stipulation and entry of the Judgment.

5. The parties bargained for and the Judgment provides for the transfer of water rights on Exhibit 4. During negotiation, however, neither the PWS, nor the landowners, nor any other party ever negotiated for the proposition now advanced, that the PWS could purchase landowner Exhibit 4 water rights and thereby acquire the right to vote for the two landowner Watermaster representatives. Not only was such provision not agreed to, but allowing the PWS's to vote for landowner representatives would pollute the process, deprive the landowners of valuable consideration, input and control over issues critical to landowners and change the negotiated balance of voting power on the Watermaster Board. Neither I, nor my clients agreed to any provision that conveyed landowner voting rights to the PWS since they are already guaranteed two positions on the Watermaster Board. Such a result was not acceptable to my clients and is not supported by the Judgment.

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

Executed this 31st day of August, 2016, at Bakersfield, California.

RÓBERT G. KUHS

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9	Attorneys for Plaintiff Richard Wood and	the Class	
10			
11			
12	SUPERIOR COURT FOR TH	IE STATE OF CALIFORNIA	
13	COUNTY OF LOS ANGELES		
14	Coordination Proceeding Special Title (Rule 1550(b))	Judicial Council Coordination	
15	Special Title (Kule 1550(b))	Proceeding No. 4408 (Honorable Jack Komar)	
	ANTELOPE VALLEY GROUNDWATER	(2201101 4820 0 4011 22011012)	
16	CASES	Lead Case No. BC 325201	
17	RICHARD A. WOOD, an individual, on	Case No.: BC 391869	
18	behalf of himself and all others similarly		
19	situated,	DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF	
	Plaintiff,	REPLY TO PUBLIC WATER SUPPLIERS' OPPOSITION TO	
20	v.	MOTION BY PRIVATE AND	
21	LOS ANGELES COUNTY	PUBLIC LANDOWNERS FOR ORDER APPROVING RULES &	
22	WATERWORKS DISTRICT NO. 40; et	REGULATIONS FOR APPOINTMENT AND ELECTION	
23	al.	OF WATERMASTER BOARD MEMBERS	
24	Defendants.		
	202011441165	Date: September 8, 2016 Time: 10:00 a.m.	
25		Dept.: Room 222 (Mosk courthouse)	
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DECLARATION OF MICHAEL D. MCLACHLAN IN SUPPORT OF REPLY RE: MOTION BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES & REGULATIONS FOR APPOINTMENT AND ELECTION OF WATERMASTER BOARD MEMBERS

I, Michael D. McLachlan, declare:

I could do so competently.

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters,

2. I am co-counsel of record of record for Plaintiff Richard Wood and the Class. I am duly licensed to practice law in California.

- 3. Commencing in November of 2013, myself and counsel for eight other parties started the process of negotiating and drafting a physical solution. This process continued for many months, and then expanded to include the other parties to what became the Judgment and Physical Solution signed by the Court in December of 2015. The process consumed many hundreds of hours.
- 4. I attended most of the in person settlement conference sessions and the telephonic sessions, and was active throughout the process of negotiation and drafting, a substantial portion of which occurred through correspondence. The watermaster provisions were one of the two most extensively negotiated issues. In particular, the composition of the watermaster board was a highly contentious issue that was debated at great length. The ultimate resolution of this issue was to find a balance of voting power that would persist in perpetuity, thereby allowing the fullest measure of protection of all of the various interests. The solution arrived at was to give the public water suppliers two seats on the watermaster board, even though their share of the native safe yield was substantially smaller than the public and private overlying landowners (the Exhibit 4 parties plus the Small Pumper Class). The overlying landowners were also allocated two seats, with AVEK a public entity beholden to all inhabitants in its service area holding the fifth seat.

- 5. The balance of voting power on the watermaster board was of paramount importance because Mr. O'Leary and I understood that the rights of the Small Pumper Class members would be in the hands of that Board after our legal representation terminated. There was no question that all parties understood that the structural balance of power on the watermaster board was a perpetual situation, i.e. that the water suppliers would control their two board seats and that the landowners would do the same. This understanding is reflected in the Judgment and Physical Solution (as set forth in the Reply brief), but nevertheless, the Public Water Suppliers seem intent on re-writing the deal post-judgment.
- 6. At no point during negotiations do I recall any Public Water Supplier, or anyone else for that matter, stating that it was the intent and desire of the Public Water Suppliers to try to obtain voting rights for the two landowner seats. This would clearly have been inconsistent with the core basis for the watermaster board seat allocation. It would have been totally unacceptable to me and my client, and I am informed and believe, essentially every other major landowner party involved in those discussions. The Public Water Suppliers' suggestion that the Judgment and Physical Solution implies or was intended to permit them to acquire voting rights over the landowner board seats is patently inconsistent with the understanding of all parties as to the balance of voting power built into the watermaster board through extensive negotiation.
- 7. The balance of power on the watermaster board was essential to my agreement to recommend the settlement to Richard Wood, the Class, and the Court. If the Judgment had permitted Public Water Supplier voting on landowner seats, I would not have recommended it to the Class and would not have asked the Court to approve it, nor would Richard Wood have agreed to sign the Judgment and Physical Solution. It is no secret the interests of the Public

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Water Suppliers have been, and continue to be, adverse to the interests of the Small Pumpers, whose interests are most similarly aligned to varying degrees with other overlying landowners, including the mutual water companies. As the Court is aware, the Small Pumper Class did not pursue a right to vote for the two landowners seats because of the mechanical difficulties in doing so. The Class ceded these voting rights with the full knowledge and understanding that the other landowners would be controlling the two seats allocated to the landowner parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 31st day of August, 2016, at Hermosa Beach, California.



Digitally signed by Michael D. DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US

Michael D. McLachlan

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7				
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	COUNTY OF LOS ANGELES			
10				
11	Coordination Proceeding	JUDICIAL COUNCIL COORDINATION		
12	Special Title (Rule 3.550)	PROCEEDING NO. 4408		
13	ANTELOPE VALLEY	Los Angeles County Superior Court Lead Case No. BC 325 201		
14	GROUNDWATER CASES	For e-service purposes only:		
15	Included Actions:	Santa Clara County Superior Court Case No. 1-05-CV-049053		
16	Los Angeles County Waterworks District No. 40			
17	v. Diamond Farming Co. Los Angeles County Superior Court Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Kern County Superior Court Case No. S-1500-CV-254-348	DECLARATION OF WILLIAM M. SLOAN IN SUPPORT OF MOTION BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES &		
18				
19		REGULATIONS FOR APPOINTMENT AND ELECTION OF WATERMASTER		
20		BOARD MEMBERS		
21	Wm. Bolthouse Farms, Inc. v. City of Lancaster Diamond Farming Co. v. City of Lancaster Diamond Farming Co. v. Palmdale Water District Riverside County Superior Court Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 (Consolidated Actions)	The Hon. Jack Komar		
22		Date: September 8, 2016		
23		Time: 10:00 a.m. Dept: Room 222 (Mosk courthouse)		
24		Dept. Room 222 (Wosk courthouse)		
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I, WILLIAM SLOAN, hereby declare as follows:

- 1. I am an attorney at Morrison and Foerster, LLP, counsel of record for cross-defendant U.S. Borax, Inc., and I am licensed to practice law in the state of California. The facts contained in this declaration are known personally to me and, if called as a witness, I could and would testify competently thereto under oath.
- 2. On August 25, 2016, Los Angeles County Waterworks District No. 40, Rosamond Community Services District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, Palmdale Water District, Quartz Hill Water District, and California Water Service Company (collectively, "Public Water Suppliers"), submitted an opposition to the motion for an order approving the rules and regulations for appointment and election of the watermaster board members.
- 3. In that opposition, the Public Water Suppliers advanced a new interpretation of Section 18.1.1 of the Judgment and Physical Solution. That section provides that the watermaster board shall be comprised of five members—one representative from the Antelope Valley East Kern Water Agency, two representatives selected by the Public Water Suppliers (one from Los Angeles County Waterworks District No. 40, and one selected by the Public Water Suppliers), and

two (2) landowner Parties, exclusive of public agencies and members of the Non-Pumper and Small Pumper Classes, selected by majority vote of the landowners identified on Exhibit 4 (or their successors in interest) based on their proportionate share of the total Production Rights identified in Exhibit 4.

4. The opposition by the Public Water Suppliers advances a novel interpretation of this provision, asserting that if they simply acquire Production Rights, that "entitles" them "to vote under Section 18.1.1 for Exhibit 4 water master board seats." Opposition at 2:8-9. Nothing in the language of Section 18.1.1 or anywhere else in the Judgment and Physical Solution says this. To the extent the opposition by the Public Water Suppliers seeks to impose such a contradictory interpretation, this declaration is submitted to inform how the Judgment and Physical Solution was negotiated and the agreement reached.

- 5. I was personally involved with negotiations over the Judgment and Physical Solution over several years, including through in-person drafting meetings, conference calls and electronic communications. In the course of those negotiations, proposals for the composition of the watermaster board went through several iterations, with the parties ultimately seeking to strike a balance between having too many board members and maintaining an even "playing field" where the Public Water Suppliers and landowners with overlying rights would both have adequate representation. Just as no landowner has, or would, propose that they could somehow become "entitled" to vote for the Public Water Supplier representatives on the watermaster board, no Public Water Supplier to my knowledge ever maintained that they could become entitled to vote for the landowner representatives. Had such a concept ever been suggested, it most certainly would have been rejected as the negotiations over watermaster board composition were designed specifically to avoid any interest (Public Water Supplier or otherwise) from controlling a majority of the members.
- 6. Even after reading the Public Water Supplier opposition, I still do not understand how they try to interpret multiple provisions and connect dots in the Judgment and Physical Solution to somehow establish their "entitlement" to vote for the landowner representatives to the watermaster board. The language does not provide that right, but if there were any ambiguity, it most certainly should be resolved based on the negotiations that led to the agreement of the parties—namely that the Public Water Suppliers would not be able to control the landowner seats (or vice versa).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on August 31, 2016, in San Francisco, California.

y: William M. SLOAN

1 2	RICHARD G. ZIMMER, ESQ SBN 107263 T. MARK SMITH, ESQ SBN 162370 CLIFFORD & BROWN		
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6 7	Attorneys for BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.		
8	SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
9			
10	CENTRAL DISTRICT		
11	COORDINATION PROCEEDING	JUDICIAL COUNCIL COORDINATION PROCEEDING	
12	SPECIAL TITLE (Rule 1550(b))	No. 4408	
13	ANTELOPE VALLEY GROUNDWATER CASES	CLASS ACTION	
		Santa Clara Case No. 1-05-CV-049053 Assigned to the Honorable Jack Komar	
14	INCLUDED ACTIONS:	Assigned to the Honorable Jack Komar Action Filed: October 26, 2005	
15	LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 v. DIAMOND FARMING	DECLARATION OF RICHARD G. ZIMMER IN SUPPORT OF REPLY TO	
16	COMPANY, et al., Los Angeles Superior Court Case No. BC325201	PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION BY PRIVATE	
17	LOS ANGELES COUNTY WATERWORKS	AND PUBLIC LANDOWNERS FOR	
18	DISTRICT NO. 40 v. DIAMOND FARMING COMPANY, et al.,	ORDER APPROVING RULES & REGULATIONS FOR APPOINTMENT	
19	Kern County Superior Court Case No. S-1500- CV-254348	AND ELECTION OF WATERMASTER BOARD MEMBERS	
20	DIAMOND FARMING COMPANY, and W.M.		
21	BOLTHOUSE FARMS, INC., v. CITY OF	Date: September 8, 2016	
22	LANCASTER, et al., Riverside Superior Court Case No. RIC 344436	Time: 9:00 a.m. Dept: Room 222, LASC	
23	[c/w case no. RIC 344668 and 353840]	Judge: Jack Komar, Presiding	
24			
25	AND DELATED ACTIONS		
26	AND RELATED ACTIONS.		
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~~	DECLARATION OF RICHARD G. ZIMMER IN SUPPORT OF REPI		
	BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROV WATERMASTER BOARD MEMBERS	ing rules & regulations for appointment of	

I, RICHARD G. ZIMMER, declare:

- 1. I am an attorney licensed to practice in the State of California. In this capacity I am a member of the Law Firm of Clifford & Brown and the attorney primarily responsible for the handling of this matter. I have been involved in this case since approximately the year 2000 when Wm. Bolthouse Farms, Inc. filed its Complaint following the Complaint filed by Diamond Farming. I am very familiar with the case and all matters leading up to the Judgment and Physical Solution. I was involved in virtually every formal settlement discussion, both in person and by telephone. I am also familiar with the terms negotiated, the arguments made by the parties in support of their respective positions, the terms of the ultimate agreement and the stated intentions of the parties regarding the agreement. I make this Declaration based upon personal knowledge.
- 2. The Judgment and Physical Solution were negotiated over a multi-year period of time. One of the main areas of disagreement was the issue of the Watermaster Board. Neither side trusted the other side to have control over the Watermaster Board which would be making decisions critical to enforcing the rights of the parties under the Judgment and protecting the groundwater basin. The landowners demanded positions on the Watermaster Board or they would not settle the case. The Purveyors wanted to limit the number of landowner representatives on the Watermaster Board. This resulted in negotiations which culminated in a balance of power among the five Board Member positions. It was agreed that AVEK would be dedicated one representative and that District No. 40 would be dedicated one position. A second public water supplier position would be selected by District No. 40 and the other water purveyors. Two positions were required to be held by landowner parties, not including any public agencies or Class members.
- 3. Other than setting forth that each group would have its Watermaster positions guaranteed in the Judgment and Physical Solution, the parties were left to determine how they would elect their representatives. The Landowners agreed to select their members by majority vote of the landowners. None of the parties submitted any detailed Rules & Regulations regarding selection of their Watermaster representatives but the balance of power was clearly discussed and agreed upon.
- 4. During the negotiations that I attended, I have no knowledge of any purveyor attorney stating, suggesting or expressing any interpretation of the agreement that would allow a Purveyor party to Declaration of Richard G. Zimmer in support of Reply to Public water suppliers' opposition to motion by private and public landowners for order approving rules & regulations for appointment of watermaster board members

take over voting rights of the landowners to select their Watermaster representatives. Allowing this would have unacceptably deprived the landowners of consideration, input and control over issues critical to landowners. I did not agree to any provisions that conveyed landowner voting rights to the Purveyors who were already guaranteed two positions on the Watermaster Board. Although voting for all Watermaster representatives based upon a percentage of groundwater rights clearly would have been advantageous to landowners, this was not the agreement. Both sides agreed to a perpetual balance of control over management to protect the basin and the interests of all stakeholders in the basin.

5. The first time I had knowledge a purveyor arguing that they could obtain landowner voting rights by purchasing Exhibit 4 water allocations was after the settlement and approval of the Judgement and Physical Solution when one of the Mutual Water Company group requested Court interpretation of the landowner Rules & Procedures which had been agreed to by the other landowners. In response to this this inter-landowner disagreement, the purveyor parties to my knowledge first made the argument that they could obtain voting rights along with the allocation of Exhibit 4 water rights. This never occurred to my knowledge during the negotiation process that culminated in the Judgment and Physical Solution.

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

Executed this 31st day of August, 2016, at Bakersfield, California.

RICHARD G. ZIMMER