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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

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

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination Proceeding No. 4408

LASC Case No.: BC 325201

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

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

WATERMASTER'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 CRAIG A. PARTON; EXHIBITS A-C

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

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

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I. INTRODUCTON

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

- That Phelan has no water rights whatsoever – neither overlying rights, appropriative rights, prescriptive rights, imported water rights, nor rights to imported water return flows, or any other right to groundwater in the Antelope Valley Basin.
- That the Phelan service area is entirely outside the Antelope Valley Basin's adjudicated boundaries.
- That Phelan has no right to pump groundwater in the Adjudication Area of the Antelope Valley and then export all of that production to its service area outside of the Adjudication Area, thus Phelan's pumping "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."
- That the "[Antelope Valley] Basin has been in a state of overdraft with no surplus water available for pumping for the entire duration of Phelan's pumping (since at least 2005)."
- That as a result of these findings of fact, this Court carved out a specifically conditioned right to pump groundwater in the Antelope Valley Basin for Phelan that was not part of the Native Safe Yield, had a quantified limit, and had an accompanying and unqualified duty to pay replacement water assessments for that production that was entirely exported outside of the Basin's jurisdictional boundaries.

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

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

II. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

8. That Phelan's "pumping of groundwater from the 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." (9:22-25.); and

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

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

III. LEGAL ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

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

Dated: April 4, 2018

PRICE, POSTEL & PARMA LLP

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

DECLARATION OF CRAIG A. PARTON

I, CRAIG A. PARTON, have personal knowledge of the matters stated in this declaration and if called to testify could and would competently do so.

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

2. A true and correct copy of the Judgment dated December 23, 2015 in this case is attached hereto as Exhibit A.

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

4. A true and correct copy of the Order After Hearing on January 31, 2018 is attached hereto as Exhibit C.

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

Craig A. Parton

Craig A. Parton

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES Included Actions: Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201; Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668 RICHARD WOOD, on behalf of himself and all other similarly situated v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC509546	Judicial Council Coordination Proceeding No. 4408 CLASS ACTION Santa Clara Case No. 1-05-CV-049053 Assigned to the Honorable Jack Komar ~~(PROPOSED)~~ JUDGMENT

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

1. The Second Amended Stipulation For Entry of Judgment and Physical Solution among the stated stipulating parties is accepted and approved by the Court.

2. Consistent with the December 23 2015 Statement of Decision ("Decision"), the Court adopts the Proposed Judgment and Physical Solution attached hereto as Exhibit A and incorporated herein by reference, as the Court's own physical solution ("Physical Solution"). The Physical Solution is binding upon all parties.

3. In addition to the terms and provisions of the Physical Solution the Court finds as follows:

   a. Each of the Stipulating Parties to the Physical Solution has the right to pump groundwater from the Antelope Valley Adjudication Area as stated in the Decision and Physical Solution.

   b. The following entities are awarded prescriptive rights from the native safe yield against the Tapia Parties, defaulted parties identified in Exhibit 1 to the Physical Solution, and parties who did not appear at trial identified in Exhibit B attached hereto, in the following amounts:

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

Desert Lake Community Services District			318 AFY
California Water Service Company			655 AFY
North Edwards Water District			111.67 AFY

No other parties are subject to these prescriptive rights.

c. Each of the parties referred to in the Decision as Supporting Landowner Parties has the right to pump groundwater from the Antelope Valley Adjudication Area as stated in the Decision and in Paragraph 5.1.10 of the Physical Solution in the following amounts:

i.	Desert Breeze MHP, LLC		18.1 AFY
ii.	Milana VII, LLC dba Rosamond Mobile Home Park		21.7 AFY
iii.	Reesdale Mutual Water Company		23 AFY
iv.	Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company, collectively		12 AFY
v.	Clan Keith Real Estate Investments, LLC., dba Leisure Lake Mobile Estates		64 AFY
vi.	White Fence Farms Mutual Water Co. No. 3		4 AFY
vii.	LV Ritter Ranch LLC		0 AFY
viii.	Rabar Enterprises, Inc., Hi-Grade Materials Co., and CJR, a General Partnership		200 AFY

d. Each member of the Small Pumper Class can exercise an overlying right pursuant to the Physical Solution. The Judgment Approving Small Pumper Class Action Settlements is attached as Exhibit C ("Small Pumper Class Judgment") and is incorporated herein by reference.

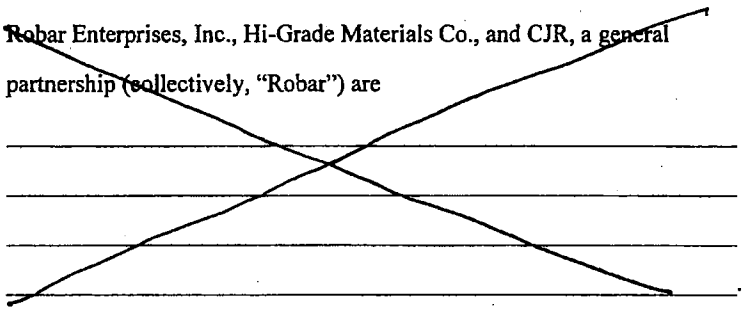
e. Cross-defendant Charles Tapia, as an individual and as Trustee of Nellie Tapia Family Trust (collectively, "The Tapia Parties") has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution.

f. Phelan Piñon Hills Community Services District ("Phelan") has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution.

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

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

i. Robar Enterprises, Inc., Hi-Grade Materials Co., and CJR, a general partnership (collectively, "Robar") are



4. Each party shall designate the name, address and email address, to be used for all subsequent notices and service of process by a designation to be filed within thirty days after entry of this Judgment. The list attached as Exhibit A to the Small Pumper Class Judgment shall be used for notice purposes initially, until updated by the Class members and/or Watermaster. The designation may be changed from time to time by filing a written notice with the Court. Any party desiring to be relieved of receiving notice may file a waiver of notice to be approved by the Court. The Court will maintain a list of parties and their respective addresses to whom notice or service of process is to be sent. If no designation is made as required herein, a party's designee shall be deemed to be the attorney of record or, in the absence of an attorney of record, the party at its specified address.

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

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

The Clerk shall enter this Judgment.

Dated: Dec 23, 2015

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding Special Title (Rule 1550(b)) **ANTELOPE VALLEY GROUNDWATER CASES**	Judicial Council Coordination Proceeding No. 4408 **Santa Clara Case No.: 1-05-CV-049053** Judge: The Honorable Jack Komar, Dept. 17 [PROPOSED] JUDGMENT AND PHYSICAL SOLUTION

INDEX OF EXHIBITS AND APPENDICES

Exhibits:

Appendices:

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

I. DESCRIPTION OF LITIGATION

1. PROCEDURAL HISTORY

1.1 Initiation of Litigation.

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

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

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

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

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

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

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

1.2 General Adjudication Commenced.

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

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

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

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

1.3 Other Actions

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

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

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

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

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

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

1.4 McCarran Amendment Issues

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

1.5 Phased Trials

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

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

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

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

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

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

1.6 Defaults

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

2. GENERAL ADJUDICATION DOES NOT APPLY TO SURFACE WATER.

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

II. DECREE

3. JURISDICTION, PARTIES, DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.8 **Basin.** The area adjudicated in this Action as shown on Exhibit 2, attached hereto and incorporated herein by reference, which lies within the boundaries of the line

labeled "Boundaries of the Adjudicated Area" and described therein. The Basin generally encompasses the Antelope Valley bordered on the West and South by the San Gabriel and Tehachapi Mountains, with the eastern boundary being the Los Angeles-San Bernardino County line, as determined by the Court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.22 Non-Pumper Class. All private (i.e., non-governmental) Persons and entities that own real property within the Basin, as adjudicated, that are not presently pumping water on their property and did not do so at any time during the five Years preceding January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase, gift, inheritance, or otherwise of such Non-Pumper Class members' land within the Basin. The Non-Pumper Class excludes (1) all Persons to the extent their properties are connected to a municipal water system, public utility, or mutual water company from which they receive water

service, (2) all properties that are listed as "improved" by the Los Angeles County or Kern County Assessor's offices, unless the owners of such properties declare under penalty of perjury that they do not pump and have never pumped water on those properties, and (3) those who opted out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have been individually named under the Public Water Suppliers' cross-complaint, unless such a landowner has opted into such class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5.45 Small Pumper Class Members. Individual members of the Small Pumper Class who meet the Small Pumper Class definition, and for purposes of this Judgment and any terms pertaining to water rights, where two or more Small Pumper Class Members reside

in the same household, they shall be treated as a single Small Pumper Class Member for purposes of determining water rights.

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

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

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

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

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

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

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

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

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

3.5.55 **Year**. Calendar year.

4. SAFE YIELD AND OVERDRAFT

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

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

5. PRODUCTION RIGHTS

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

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

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

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

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

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

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

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

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

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

5.1.3.2 The primary means for monitoring the Small Pumper Class Members' Groundwater use under the Physical Solution will be based on physical inspection by

the Watermaster, including the use of aerial photographs and satellite imagery. All Small Pumper Class Members agree to permit the Watermaster to subpoena the electrical meter records associated with their Groundwater wells on an annual basis. Should the Watermaster develop a reasonable belief that a Small Pumper Class Member household is using in excess of 3 acre-feet per Year, the Watermaster may cause to be installed a meter on such Small Pumper Class Member's well at the Small Pumper Class Member's expense.

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

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

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

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

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

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

5.1.4 Federal Reserved Water Right. The United States has a right to Produce 7,600 acre-feet per Year 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 Cappaert v. United States*, 426 U.S. 128, 138 (1976); *United States v. New Mexico*, 438 U.S. 696, 700 (1978). Maps of the boundaries of Edwards Air Force Base and Plant 42 are attached hereto as Exhibits 6 and 7. The United States may Produce any or all of this water at any time for uses consistent with the purposes of its Federal Reserved Water Right. Water uses at Edwards Air Force Base and

Plant 42 as of the date of this Judgment are consistent with the military purposes of the facilities. The Federal Reserved Water Right to Produce 7,600 acre-feet per Year is not subject to Rampdown or any reduction including Pro-Rata Reduction due to Overdraft.

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

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

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

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

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

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

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

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

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

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

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

5.1.5.2.7 The California Department of Veteran Affairs-3 acre-feet per Year.

5.1.5.2.8 The California Highway Patrol -3 acre- feet per Year.

5.1.5.2.9 The California Department of Military-3 acre-feet per Year.

5.1.5.3 If at any time, the amount of water supplied to the State of California by District No. 40, AVEK, or Rosamond Community Service District is no longer available or no longer available at reasonable rates to the State of California, the State of California shall have the additional right to Produce Native Safe Yield to meet its reasonable and beneficial needs up to 787 acre-feet per Year, the amount provided by District No. 40, AVEK and Rosamond Community Services District to the State of California in the Year 2013.

5.1.5.4 The following provisions will also apply to each specific agency listed below:

5.1.5.4.1 California Department of Corrections & Rehabilitation (CDCR). In addition to its Production Right pursuant to Paragraphs 5.1.5.2.5 and 5.1.5.3, CDCR may also pump Groundwater: (1) to the extent necessary to conduct periodic maintenance of its well pumping equipment; and (2) as a supplementary source of drinking water or as an emergency back-up supply as set forth in Water Code section 55338.

5.1.5.4.2 California Department of Water Resources (DWR). In addition to its Production pursuant to Paragraphs 5.1.5.2.1 and 5.1.5.3 above, DWR may also pump Native Safe Yield from the area adjacent to and beneath the California Aqueduct and related facilities at a time and in an amount it determines is reasonably necessary to protect the physical integrity of the California Aqueduct and related facilities from high Groundwater. Further, notwithstanding provisions of this Judgment prohibiting the export of Native Safe Yield from the Basin, DWR may place the Native Safe Yield that it pumps for the protection of the California Aqueduct into the California Aqueduct, whether or not such Native Safe Yield is

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

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

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

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

5.1.7 City of Lancaster. The City of Lancaster ("Lancaster") can Produce up to 500 acre-feet of Groundwater for reasonable and beneficial uses at its National Soccer Complex. Such production shall only be subject to Administrative Assessment and no other assessments. Lancaster will stop Producing Groundwater and will use Recycled Water supplied from District No. 40, when it becomes available, to meet the reasonable and beneficial water uses of the National Soccer Complex. Lancaster may continue to Produce up to 500 acre-feet of Groundwater until Recycled Water becomes available to serve the reasonable and beneficial water uses of the National Soccer Complex. Nothing in this paragraph shall be

construed as requiring Lancaster to have any responsibility for constructing, or in any way contributing to the cost of, any infrastructure necessary to deliver Recycled Water to the National Soccer Complex.

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

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

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

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

5.2 Rights to Imported Water Return Flows.

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

5.2.2 Water Imported Through AVEK. The right to Produce Imported Water Return Flows from water imported through AVEK belongs exclusively to the Parties identified on Exhibit 8, attached hereto, and incorporated herein by reference. Each Party shown on Exhibit 8 shall have a right to Produce an amount of Imported Water Return Flows in any Year equal to the applicable percentage multiplied by the average amount of Imported Water used

by that Party within the Basin in the preceding five Year period (not including Imported Stored Water in the Basin). Any Party that uses Imported Water on lands outside the Basin but within the watershed of the Basin shall be entitled to Produce Imported Water Return Flows to the extent such Party establishes to the satisfaction of the Watermaster the amount that its Imported Water Return Flows augment the Basin Groundwater supply. This right shall be in addition to that Party's Overlying or Non-Overlying Production Right. Production of Imported Water Return Flows is not subject to the Replacement Water Assessment. All Imported Water Return Flows from water imported through AVEK and not allocated to Parties identified in Exhibit 8 belong exclusively to AVEK, unless otherwise agreed by AVEK. Notwithstanding the foregoing, Boron Community Services District shall have the right to Produce Imported Water Return Flows, up to 78 acre-feet annually, based on the applicable percentage multiplied by the average amount of Imported Water used by Boron Community Services District outside the Basin, but within its service area in the preceding five Year period (not including Imported Stored Water in the Basin) without having to establish that the Imported Water Return Flows augment the Basin Groundwater supply.

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

5.3 Rights to Recycled Water. The owner of a waste water treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the Recycled Water as against anyone who has supplied the water discharged into the waste water collection and treatment system. At the time of this Judgment those Parties that

produce Recycled Water are Los Angeles County Sanitation Districts No. 14 and No. 20, Rosamond Community Services District, and Edwards Air Force Base. Nothing in this Judgment affects or impairs this ownership or any existing or future agreements for the use of Recycled Water within the Basin.

6. INJUNCTION

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

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

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

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

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

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

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

6.5 **Continuing Jurisdiction.** The Court retains and reserves full jurisdiction, power and authority for the purpose of enabling the Court, upon a motion of a Party or Parties

noticed in accordance with the notice procedures of Paragraph 20.6 hereof, to make such further or supplemental order or directions as may be necessary or appropriate to interpret, enforce, administer or carry out this Judgment and to provide for such other matters as are not contemplated by this Judgment and which might occur in the future, and which if not provided for would defeat the purpose of this Judgment.

III. PHYSICAL SOLUTION

7. GENERAL

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

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

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

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

8. RAMPDOWN

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

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

8.3 **Reduction of Production During Rampdown.** During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each Party may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments, from its Pre-Rampdown Production to its Production Right. Except as is determined to be exempt during the Rampdown period pursuant to the Drought Program provided for in

Paragraph 8.4, any amount Produced over the required reduction shall be subject to Replacement Water Assessment. The Federal Reserved Water Right is not subject to Rampdown.

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

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

8.4.2 During the Rampdown period, the Drought Program Participants each agree that, in order to minimize the amount of excess Groundwater Production in the Basin, they will use all water made available by AVEK at no more than the then current AVEK treated water rate in any Year in which they Produce Groundwater in excess of their respective rights to Produce Groundwater under this Judgment. During the Rampdown period, no Production by a Drought Program Participant shall be considered excess Groundwater Production exempt from a Replacement Water Assessment under this Drought Program unless a Drought Program Participant has utilized all water supplies available to it including its Production Right to Native Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water Rights, Imported Water, and Production rights previously transferred from another party. Likewise, no Production by a Drought Program Participant will be considered excess

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

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

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

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

9. ASSESSMENTS.

9.1 Administrative Assessment. Administrative Assessments to fund the Administrative Budget adopted by the Watermaster shall be levied uniformly on an annual basis against (1) each acre foot of a Party's Production Right as described in Paragraph 5.1, (2) each acre foot of a Party's right to Produce Imported Water Return Flows as determined pursuant to Paragraph 5.2, (3) each acre foot of a Party's Production for which a Replacement Water Assessment has been imposed pursuant to Paragraph 9.2, and (4) during the Rampdown, each acre foot of a Party's Production in excess of (1)-(3), above, excluding Production from Stored Water and/or Carry Over water, except that the United States shall be subject to the Administrative Assessment only on the actual Production of the United States. During the

Rampdown the Administrative Assessment shall be no more than five (5) dollars per acre foot, or as ordered by the Court upon petition of the Watermaster. Non-Overlying Production Rights holders using the unused Production allocation of the Federal Reserved Water Right shall be subject to Administrative Assessments on water the Non-Overlying Production Rights holders Produce pursuant to Paragraph 5.1.4.1.

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

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

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

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

member of the Non-Pumper Class must comply with the New Production Application Procedure specified in Paragraph 18.5.13; (3) as of this Judgment no member of the Non-Pumper Class has established a Production Right to the reasonable and beneficial use of Groundwater based on their unexercised claim of right to Produce Groundwater; (4) if in the future a member of the Non-Pumper Class proposes to Produce Groundwater for reasonable and beneficial use, the Watermaster as part of the New Production Application Procedure, has the authority to determine whether such a member has established that the proposed New Production is a reasonable and beneficial use in the context of other existing uses of Groundwater and then-current Basin conditions; and (5) the Watermaster's determinations as to the approval, scope, nature and priority of any New Production is reasonably necessary to the promotion of the State's interest in fostering the most reasonable and beneficial use of its scarce water resources. All provisions of this Judgment regarding the administration, use and enforcement of the Replacement Water Assessment shall apply to each Non-Pumper Class member that Produces Groundwater. Prior to the commencement of Production, each Producing Non-Pumper Class member shall install a meter and report Production to the Watermaster. The Court finds that this Judgment is consistent with the Non-Pumper Stipulation of Settlement and Judgment.

9.3 Balance Assessment. In order to ensure that after Rampdown each Party may fully exercise its Production Right, there may be a Balance Assessment imposed by the Watermaster. The Balance Assessment shall be assessed on all Production Rights, excluding the United States' actual Production, but including that portion of the Federal Reserved Right Produced by other Parties, in an amount determined by the Watermaster. A Balance Assessment may not be imposed until after the end of the Rampdown. In determining whether to adopt a Balance Assessment, and in what amount, the Watermaster Engineer shall consider current Basin conditions as well as then-current pumping existing after Rampdown exclusive of any consideration of an effect on then-current Basin conditions relating to Production of Groundwater pursuant to the Drought Program which occurred during the Rampdown, and shall only assess a

Balance Assessment or curtail a Party's Production under section 9.3.4 below, to avoid or mitigate Material Injury that is caused by Production after the completion of the Rampdown.

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

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

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

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

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

10.1 Central Antelope Valley Subarea. The Central Antelope Valley Subarea is the largest of the five Subareas and underlies Rosamond, Quartz Hill, Lancaster, Edwards AFB and much of Palmdale. This Subarea also contains the largest amount of remaining agricultural land use in the Basin. The distinctive geological features of the Central Antelope Valley Subarea are the presence of surficial playa and pluvial lake deposits; the widespread occurrence of thick, older pluvial lake bed deposits; and alluvial deposits from which Groundwater is produced above and below the lake bed deposits. The Central Antelope Valley Subarea is defined to be east of the largely buried ridge of older granitic and tertiary rocks exposed at Antelope Buttes and extending beyond Little Buttes and Tropico Hill. The Central Subarea is defined to be southwest and

northeast of the extension of the Buttes Fault, and northwest of an unnamed fault historically identified from Groundwater level differences, as shown on Exhibit 10.

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

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

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

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

11. INCREASE IN PRODUCTION BY THE UNITED STATES.

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

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

12. MOVEMENT OF PUBLIC WATER SUPPLIERS PRODUCTION FACILITIES.

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

Injury. The Court shall not impose the cost of moving the Public Water Supplier Production Facilities on any non-Public Water Supplier Party to this Judgment.

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

14. **STORAGE.** All Parties shall have the right to store water in the Basin pursuant to a Storage Agreement with the Watermaster. If Littlerock Creek Irrigation District or Palmdale Water District stores Imported Water in the Basin it shall not export from its service area that Stored Water. AVEK, Littlerock Creek Irrigation District or Palmdale Water District may enter into exchanges of their State Water Project "Table A" Amounts. Nothing in this Judgment limits or modifies operation of preexisting banking projects (including AVEK, District No. 40, Antelope Valley Water Storage LLC, Tejon Ranchcorp and Tejon Ranch Company, Sheep Creek Water

Co., Rosamond Community Services District and Palmdale Water District) or performance of preexisting exchange agreements of the Parties. The Watermaster shall promptly enter into Storage Agreements with the Parties at their request. The Watermaster shall not enter into Storage Agreements with non-Parties unless such non-Parties become expressly subject to the provisions of this Judgment and the jurisdiction of the Court. Storage Agreements shall expressly preclude operations which will cause a Material Injury on any Producer. If, pursuant to a Storage Agreement, a Party has provided for pre-delivery or post-delivery of Replacement Water for the Party's use, the Watermaster shall credit such water to the Party's Replacement Water Obligation at the Party's request. Any Stored Water that originated as State Water Project water imported by AVEK, Palmdale Water District or Littlerock Creek Irrigation District may be exported from the Basin for use in a portion of the service area of any city or public agency, including State Water Project Contractors, that are Parties to this action at the time of this Judgment and whose service area includes land outside the Basin. AVEK may export any of its Stored State Project Water to any area outside its jurisdictional boundaries and the Basin provided that all water demands within AVEK's jurisdictional boundaries are met. Any Stored Water that originated as other Imported Water may be exported from the Basin, subject to a requirement that the Watermaster make a technical determination of the percentage of the Stored Water that is unrecoverable and that such unrecoverable Stored Water is dedicated to the Basin.

15. CARRY OVER

15.1 In Lieu Production Right Carry Over. Any Producer identified in Paragraph 5.1.1, 5.1.5 and 5.1.6 can utilize In Lieu Production by purchasing Imported Water and foregoing Production of a corresponding amount of the annual Production of Native Safe Yield provided for in Paragraph 5 herein. In Lieu Production must result in a net reduction of annual Production from the Native Safe Yield in order to be entitled to the corresponding Carry Over benefits under this paragraph. In Lieu Production does not make additional water from the Native Safe Yield available to any other Producer. If a Producer foregoes pumping and uses Imported Water In Lieu of Production, the Producer may Carry Over its right to the unproduced portion of

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

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

15.3 Production Right Carry Over. If a Producer identified in Paragraph 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full Production Right in any Year, the Producer may Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years. A

Producer must Produce its full Production Right before any Carry Over water, or any other water, is Produced. Carry Over water will be Produced on a first-in, first-out basis. At the end of the Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to store unproduced portions, subject to terms and conditions in the Watermaster's discretion. Any such Storage Agreements shall expressly preclude operations, including the rate and amount of extraction, which will cause a Material Injury to another Producer or Party, any subarea or the Basin. If not converted to a Storage Agreement, Carry Over water not Produced by the end of the tenth Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry Over water. The Producer may transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.

16. TRANSFERS.

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

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

16.3 Limitation on Transfers of Water by Antelope Valley United Mutuals Group. After the date of this Judgment, any Overlying Production Rights pursuant to Paragraph 5.1.1, rights to Imported Water Return Flows pursuant to Paragraph 5.2, rights to Recycled Water pursuant to Paragraph 5.3 and Carry Over water pursuant to Paragraph 15 (including any water banked pursuant to a Storage Agreement with the Watermaster) that are at any time held by any member of the Antelope Valley United Mutuals Group may only be transferred to or amongst other members of the Antelope Valley United Mutuals Group, except as provided in Paragraph

16.3.1. Transfers amongst members of the Antelope Valley United Mutuals Group shall be separately reported in the Annual Report of the Watermaster pursuant to Paragraphs 18.4.8 and 18.5.17. Transfers amongst members of the Antelope Valley United Mutuals Group shall not be deemed to constitute an abandonment of any member's non-transferred rights.

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

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

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

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

17.2 **Change in Point of Extraction by the United States**. The point(s) of extraction for the Federal Reserved Water Right may be changed, at the sole discretion of the United States, and not subject to the preceding limitation on Material Injury, to any point or points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction for the Federal Reserved Water Right may be changed to points outside the boundaries of

Edwards Air Force Base or Plant 42, provided such change in the point of extraction does not cause Material Injury. In exercising its discretion under this Paragraph 17.2, the United States shall consider information in its possession regarding the effect of Production from the intended new point of extraction on the Basin, and on other Producers. Any such change in point(s) of extraction shall be at the expense of the United States. Nothing in this Paragraph is intended to waive any monetary claim(s) another Party may have against the United States in federal court based upon any change in point of extraction by the United States.

18. WATERMASTER

18.1 Appointment of Initial Watermaster.

18.1.1 Appointment and Composition: The Court hereby appoints a Watermaster. The Watermaster shall be a five (5) member board composed of one representative each from AVEK and District No. 40, a second Public Water Supplier representative selected by District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation District, California Water Service Company, Desert Lake Community Services District, North Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch Irrigation District, and Rosamond Community Services District, 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. The United States may also appoint a non-voting Department of Defense (DoD) Liaison to the Watermaster committee to represent DoD interests. Participation by the DoD Liaison shall be governed by Joint Ethics Regulation 3-201. The opinions or actions of the DoD liaison in participating in or contributing to Watermaster proceedings cannot bind DoD or any of its components.

18.1.2 Voting Protocol for Watermaster Actions:

18.1.2.1 The Watermaster shall make decisions by unanimous vote for the purpose of selecting or dismissing the Watermaster Engineer.

18.1.2.2 The Watermaster shall determine by unanimous vote, after consultation with the Watermaster Engineer, the types of decisions that shall require unanimous vote and those that shall require only a simple majority vote.

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

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

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

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

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

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

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

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

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

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

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

18.4.5 Annual Administrative Budget. The Watermaster shall prepare a proposed administrative budget for each Year. The Watermaster shall hold a public hearing regarding the proposed administrative budget and adopt an administrative budget. The administrative budget shall set forth budgeted items and Administrative Assessments in sufficient

detail to show the allocation of the expense among the Producers. Following the adoption of the budget, the Watermaster may make expenditures within budgeted items in the exercise of powers herein granted, as a matter of course.

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

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

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

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

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

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

18.4.12 Assessment Procedure. Each Party hereto is ordered to pay the assessments authorized in Paragraph 9 of this Judgment, which shall be levied and collected in

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

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

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

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

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

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

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

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

18.5.7 Purchases of and Recharge with Replacement Water. To the extent Imported Water is available, the Watermaster Engineer shall use Replacement Water Assessment proceeds to purchase Replacement Water, and deliver such water to the area deemed most appropriate as soon as practicable. The Watermaster Engineer may pre-purchase

Replacement Water and apply subsequent assessments towards the costs of such pre-purchases. The Watermaster Engineer shall reasonably and equitably actively manage the Basin to protect and enhance the health of the Basin.

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

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

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

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

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

18.5.13 New Production Application Procedure. The Watermaster Engineer shall determine whether a Party or Person seeking to commence New Production has established the reasonableness of the New Production in the context of all other uses of Groundwater in the Basin at the time of the application, including whether all of the Native Safe Yield is then currently being used reasonably and beneficially. Considering common law water rights and priorities, the mandate of certainty in Article X, section 2, and all other relevant

factors, the Watermaster Engineer has authority to recommend that the application for New Production be denied, or approved on condition of payment of a Replacement Water Assessment. The Watermaster Engineer shall consider, investigate and recommend to the Watermaster whether an application to commence New Production of Groundwater may be approved as follows:

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

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

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

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

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

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

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

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

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

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

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

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

18.5.13.1.12 Other pertinent information which the Watermaster Engineer may require.

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

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

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

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

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

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

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

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

18.5.18.1 Replacement Obligations;

18.5.18.2 Hydrologic Data Collection;

18.5.18.3 Purchase and Recharge of Imported Water;

18.5.18.4 Notice List;

18.5.18.5 New Production Applications

18.5.18.6 Rules and Regulations;

18.5.18.7 Measuring Devices, etc;

18.5.18.8 Storage Agreements;

18.5.18.9 Annual Administrative Budget;

18.5.18.10 Transfers;

18.5.18.11 Production Reports;

18.5.18.12 Prior Year Report;

18.5.18.13 Amount of Stored Water owned by each Party;

18.5.18.14 Amount of Stored Imported Water owned by each Party;

18.5.18.15 Amount of unused Imported Water Return Flows owned by each Party;

18.5.18.16 Amount of Carry Over Water owned by each Party;

18.5.18.17 All changes in use.

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

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

19. ADVISORY COMMITTEE

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

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

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

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

Exhibit B

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**

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

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CROSS-COMPLAINANT PUBLIC WATER SUPPLIERS HAVE PRESCRIPTIVE RIGHTS

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

A. Evidence of Adverse Use (Overdraft)

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

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

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

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

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

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

B. Evidence of Notice

"To perfect a prescriptive right the adverse use must be 'open and notorious' and 'under claim of right,' which means that both the prior owner and the claimant must know that the adverse use is occurring. In the groundwater context that requires evidence from which the court

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

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

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

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

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

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

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

C. **Continuous 5 Years Use**

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

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

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

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

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

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

The Court further finds that Phelan's pumping of groundwater from the Basin negatively impacts the Butte sub-basin. Phelan's expert witness, Mr. Tom Harder, testified that Phelan's groundwater pumping 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.

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

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

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

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

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

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

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

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

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

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

VII. SUPPORTING LANDOWNER PARTIES – TRIAL STIPULATIONS

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

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

a. Desert Breeze MHP, LLC – 18.1 acre-feet per year;

b. Milana VII, LLC dba Rosamond Mobile Home Park – 21.7 acre-feet per year;

c. Reesdale Mutual Water Company – 23 acre-feet per year;

d. Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company. – 12 acre-feet per year;

e. Clan Keith Real Estate Investments, LLC. dba Leisure Lake Mobile Estates – 64 acre-feet per year; and

f. White Fence Farms Mutual Water Co. No. 3 - 4 acre-feet per year.

g. LV Ritter Ranch, LLC – 0 acre-feet per year.

h. Rebar Enterprises, Inc., Hi-Grade Materials, Co., and CTR, a General Partnership – 200 acre-feet per year.

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

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

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

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

VIII. SMALL PUMPER CLASS SETTLEMENT AGREEMENT IS APPROVED

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

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

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

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

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

X. WILLIS CLASS

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

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

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

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

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

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

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

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

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/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf.)

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

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

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

XI. PARTIES WHO FAILED TO APPEAR AT TRIAL

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

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

XII. PHYSICAL SOLUTION

A. Legal Standard

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

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

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

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

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

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

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

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

B. A Physical Solution Is Required Now

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

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

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

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

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

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

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

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

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

D. <u>The Court Uses Its Independent Judgment To Adopt The Physical Solution</u>

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

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

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

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

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

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

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

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

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

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

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

G. <u>The Physical Solution Reasonably Treats All Overlying Rights</u>

The Court finds that each party is treated reasonably by the Physical Solution; the priority of rights in the Basin is preserved; no vested rights are eliminated; and allocations are reasonably tied to reasonable and beneficial use and the health of the Basin. (See *Lodi, supra*, 7 Cal.2d at 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

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

5) Return Flows From Imported Water

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

6) Phelan

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

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

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

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

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

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

The Public Water Suppliers entered into a Stipulation of Settlement with the Willis Class ("Willis Class Stipulation" or "Stipulation") which was approved by the Court on September 22, 2011. As the Court has already recognized, the Stipulation—which was only between the Willis Class and the Public Water Suppliers—did not and cannot establish a water rights determination binding upon all parties in these proceedings. (Order after November 18, 2010 Hearing ["the court determination of physical solution cannot be limited by the [Stipulation]"; the Stipulation "may not affect parties who are not parties to the [Stipulation]"].) Rather, water rights must be determined by the Court as part of a comprehensive physical solution to the Basin's chronic overdraft condition. Indeed, the Willis Class acknowledged in the Stipulation that the ultimate determination of its reasonable correlative right would depend upon the existing and historical pumping of all other overlying landowners in the Basin. (Stipulation, ¶IV.D.3.) While the Stipulation recognized that the Willis Class members may receive whatever is later to be determined by the Court as their reasonable correlative right to the Basin's native safe yield for actual reasonable and beneficial uses, it could do nothing more. Nothing in the Decision, Judgment, or Physical Solution, alters the agreed-upon allocations between the Public Water Suppliers and the Willis Class. That relationship has no impact on the Court's duty to impose a Physical Solution that protects the Basin.

The Court finds that the Physical Solution is consistent with the Willis Class Stipulation for at least the following reasons:

1) The Willis Class Stipulation recognizes that there would be Court-imposed limits on the Willis Class' correlative share of overlying rights because the Basin is and has been in an overdraft condition for decades;

2) No member of the Willis Class has established any present right to produce groundwater for reasonable and beneficial use based on their unexercised overlying claim; and

3) The Physical Solution recognizes the Willis Class' share of correlative overlying rights and does not unreasonably burden its members' rights given the significant reductions in groundwater pumping and increased expense incurred by the Stipulating Parties in the Physical Solution. At

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

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

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

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

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

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

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

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

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

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

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

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

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

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

XIII. CONCLUSION

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

Dated: December 23 2015

JUDGE OF THE SUPERIOR COURT

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Exhibit C

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

Judge: Honorable Jack Komar, Ret.

This Document Pertains to Add-On Case:

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

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

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

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

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

[1] All references to "sections" are to the sections in the judgment unless otherwise noted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

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

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

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

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

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

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

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

SO ORDERED.

Dated: February 5, 2018

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

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