No. F075451

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

ANTELOPE VALLEY GROUNDWATER CASES

Appeal From an Order of the Superior Court of the State of California, County of Los Angeles
Honorable Jack Komar, Judge Presiding
Case No. JCCP4408

ANTELOPE VALLEY WATERMASTER'S RESPONDENT'S BRIEF

PRICE, POSTEL & PARMA LLP
Craig A. Parton, State Bar No. 132759
Timothy E. Metzinger, State Bar No. 145266
200 East Carrillo Street, Fourth Floor
Santa Barbara, California 93101
Telephone: (805) 962-0011
Email: tem@ppplaw.com

Attorneys for Respondent
ANTELOPE VALLEY WATERMASTER

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to Rules 8.208 and 8.488 of the California Rules of Court, the undersigned counsel of record for Respondent Antelope Valley Watermaster certifies that there are no interested entities or persons that must be listed under Rule 8.208.

Dated: August 24, 2021 PRICE, POSTEL & PARMA LLP

By: _____

Craig A. Parton
Timothy E. Metzinger
Counsel for Respondent
Antelope Valley Watermaster

I. INTRODUCTION

After more than a decade of litigation, the trial court entered a judgment in the Antelope Valley Groundwater Cases which included a physical solution addressing the pumping of groundwater within the area subject to the litigation in northern Los Angeles County and southern Kern County. The judgment and physical solution defined the area subject to its provisions, determined that the aquifer within the adjudication area was hydrologically connected, and adjudicated the rights of the various claimants to produce water from the aquifer. The judgment also determined that the aquifer was in a state of overdraft because the average annual extractions from the aquifer had significantly exceeded recharge for decades, causing a persistent lowering of groundwater levels.

In order to bring groundwater extractions into balance with recharge, the judgment provides for a seven-year "rampdown" period during which the parties found to have pumping rights must progressively reduce their production of groundwater in accordance with a formula set forth in the judgment. Any party which extracts water in excess of its allotment is required to pay a replacement water assessment, which is used to purchase water from outside the basin to replace the groundwater extracted in excess of the amounts prescribed by the judgment.

Recognizing the economic impact the rampdown procedures would have on the parties subject to its provisions, the trial court provided for a two-

year "grace period" at the beginning of the rampdown process. The judgment provides that during this period "no Producer will be subject to a Replacement Water Assessment." The grace period gives the affected parties two years to make any necessary arrangements for the considerable reduction in their groundwater extractions imposed by the rampdown procedures.

Appellant Phelan Piñon Hills Community Services District ("Phelan") was one of the parties that claimed the right to pump groundwater from the adjudicated basin. After this litigation commenced, Phelan began pumping water from a single well within the basin, which it exports to its service area located entirely outside of the basin. After a trial that was conducted in multiple stages, the trial court determined that Phelan has no rights -- 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 basin. The trial court's determination that Phelan lacks any right to extract groundwater from the basin was affirmed by this Court in a decision filed on December 19, 2020, and published in its entirety on January 7, 2021. (Fifth District Court of Appeal Case No. F082469.)

Notwithstanding its finding that Phelan lacks any right to the basin's groundwater, the trial court nevertheless provided in the judgment that Phelan could pump up to 1,200 acre-feet of groundwater per year, provided that such pumping did not cause "material injury" to the basin and provided

that Phelan paid a replacement water assessment for all of the water that it extracted. The replacement water assessment would be used to pay for the cost of importing water to the basin to replace the water extracted by Phelan, thus neutralizing the impact of Phelan's pumping.

Following the entry of the judgment, Phelan continued to extract water from the basin, but it refused to pay replacement water assessments for the water it took in 2016 and 2017. Phelan instead sought an order that the two-year grace period to the rampdown procedures applies to Phelan as well as to the parties who are required to curtail their extractions in accordance with those procedures. Since Phelan has no legal right to the basin's groundwater, the effect of such an order would be to allow Phelan to extract water to which it has no entitlement for two years without paying to replace the water it takes.

Not surprisingly, the trial court ruled that the two-year grace period only applies to the parties who have the legal right to pump water from the basin and whose rights are subject to the rampdown procedures. It is undisputed that Phelan is not such a party. Phelan's sole right to extract water is set forth in Paragraph 6.4.1.2 of the judgment, which provides: "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." Absent the fulfillment of these conditions, Phelan is ensubject to enjoined from No grace period from Phelan's obligation to pay a replacement water assessment for such water is provided for in the judgment.

The trial court further noted that permitting Phelan to pump water for two years without replenishment (paid for by a replacement water assessment) would adversely affect the basin. The judgment and physical solution were crafted on the basis of the evidence and expert testimony presented at trial concerning the pumping reductions necessary to bring the basin into hydraulic balance. Phelan's pumping was not considered in crafting the physical solution because it was intended that such pumping would have no net impact on the basin. Allowing Phelan to pump without the payment of a replacement water assessment would contribute to the overdraft contrary to the purposes of the judgment and cause harm to the basin.

The trial court's order denying Phelan's request to avoid payment of a replacement water assessment for the water it extracted in 2016 and 2017 is abundantly supported by the language of the judgment and the extrinsic evidence considered by the trial court and should be affirmed by this Court.

II. STATEMENT OF FACTS

A. The Antelope Valley Groundwater Cases and the AVAA

Approximately 20 years ago the first lawsuits were filed that ultimately evolved into the Antelope Valley Groundwater Cases ("AVGC"). (RA 7.)[1] The AVGC proceeding litigated whether water supply from natural and imported sources, which replenishes an aquifer from which many parties obtain groundwater, was inadequate to meet the competing annual demands of those groundwater producers, thereby creating an overdraft condition. (*Ibid.*) This aquifer, consisting of several hydrologically interconnected subbasins, underlies the Antelope Valley Adjudication Area ("AVAA"). (RA 9.)

The aquifer has been in a state of overdraft -- meaning that long-term extractions from the aquifer have exceeded the amount of water replenishing the aquifer – for decades prior to the commencement of the present litigation in 1999. The declining water levels have caused significant long-term damage, including subsidence and lost aquifer storage capacity. While the estimated average annual safe yield from all sources of recharge, including natural sources such as precipitation and external sources such as imported water and return flows, was 110,000 acre-feet per year ("afy"), the parties

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[1] As used herein, "AA" refers to the Appellant's Appendix, "RA" refers to the Respondent's Appendix and "AOB" refers to the Appellant's Opening Brief.

which pumped groundwater from the basin were annually extracting between 130,000 and 150,000 afy. (RA 10.)

Numerous parties asserted that, without a comprehensive adjudication of all competing parties' rights to produce groundwater from the aquifer, this continuing overdraft would continue to negatively impact the health of the aquifer. After the Judicial Council ordered all then-pending lawsuits consolidated into this single proceeding, the trial court embarked on an 11-year process of resolving these claims, which it divided into six distinct phases:

Phase 1: Determining the Geographic boundaries of the AVAA:

The trial court conducted a trial in October 2006 to establish the jurisdictional boundaries for the AVAA. Establishing boundaries was essential to determine what parties and entities with claims to the groundwater would be necessary parties to the litigation, as either owners with overlying rights or as appropriators, so that a comprehensive adjudication of all claims could be made in later proceedings. (RA 11.)

Phase 2: Determining Hydraulic Connectivity Within the AVAA:

In the second phase, the trial court heard evidence to assess the hydrologic nature of the aquifer within the geographic boundaries of the AVAA. The trial court concluded that there was enough hydraulic connectivity within the AVAA basin as a whole to obviate any claim that certain sections should be treated as separate basins. (RA 11.)

Phase 3: Determining Safe Yield and Overdraft:

In the third phase, the trial court determined that the AVAA was in a state of overdraft and that annual extractions had significantly exceeded average recharge for decades, causing a steady lowering of water levels and accompanying subsidence since 1951. (RA 13.) The trial court further determined that the average total safe yield from all sources was 110,000 afy for the AVAA as a whole and that current annual extractions from the AVAA ranged between 130,000 afy and 150,000 afy, thus exceeding average annual recharge by 20,000 afy to 40,000 afy. (RA 13.)

Phase 4: Determining Groundwater Production by the Claimants:

In the fourth phase, the trial court determined how much groundwater the various major stakeholders pumped from the AVAA basin in the relevant years. The trial court's findings in this regard were based on stipulations and evidence presented by the parties concerning the amounts pumped during this time period. (RA 14.)

Phase 5: Determination of Federal Reserve Rights and Imported Water Return Flow Rights:

The trial court ordered a fifth phase of the trial to ascertain federal reserve water rights and any claimed rights to recapture and use any return flows from water imported into the AVAA. While this phase was being tried, however, the vast majority of the parties agreed to a proposed global

settlement of their respective groundwater claims. The settlement included an agreement on the contours of a basin-wide groundwater management plan to implement a Physical Solution to the AVAA basin's overdraft conditions that recognized the groundwater rights of the parties to the global settlement. (RA 15.)

B. Phelan's Claims to Pump Groundwater from the AVAA Basin

Phelan is a public agency created in 2008 as a community services district to provide water to its customers. (AOB 10; RA 10.) Phelan's source for most of water it distributes is groundwater pumped from wells outside of the AVAA, and its service area is entirely outside of the boundaries of the AVAA. (AA 149; RA 10.) In late 2005, six years after these proceedings commenced, Phelan began operating a well (Well 14) on a parcel that it acquired within the boundaries of the AVAA. (RA 10; AOB 11.)

In late 2008, during the second phase of the case, Phelan filed a cross-complaint alleging, among other things, that it possessed an appropriative right to pump water from the AVAA because there was local surplus of water. Phelan also alleged that it has "municipal priority" rights, that it has the right to the "recapture of return flows," and that some of the other parties' uses of the water was unreasonable and constituted waste. (RA 11-12).

C. The Trial of Phelan's Claims to Pump Water from the AVAA Basin

Although Phelan participated in the settlement negotiations that led to the proposed Physical Solution for the basin, the parties were unable to reach an agreement concerning Phelan's claims. The trial court accordingly bifurcated Phelan's claims into two stages, the first of which was tried in late 2014 and concerned Phelan's claims to an appropriative water right and a right to return flows from native water. After the presentation of evidence and expert testimony, the trial court found that Phelan had no appropriative right to pump water from the AVAA basin because it had failed to prove that there was surplus water available for appropriative use. The trial court further ruled that Phelan had no cognizable right to return flows attributable to native waters that recharged the AVAA basin. (RA 16-17.)

The second stage of the trial of Phelan's claims, including its "municipal rights" and waste causes of action, commenced in August 2015. Following the presentation of evidence by Phelan, one of the other parties moved for judgment under Code of Civil Procedure section 631.8, but the trial court deferred ruling on the motion until it could hear further evidence in the scheduled 6th phase of the trial of the Physical Solution. (RA 18.)

D. The Physical Solution

As discussed, in the spring of 2015 the settling parties presented a stipulation containing a proposed plan, the Physical Solution, for the entire

AVAA, which was agreed upon by the vast majority of the parties to the consolidated actions. (RA 18.) The proposed judgment contained an allocation of the safe yield among the numerous parties. Although the proposed judgment did not allocate any of the available safe yield to Phelan, it did specify that Phelan could pump up to 1,200 afy from Well 14 for use outside of the AVAA provided such pumping did not cause "material injury" to the AVAA basin and provided Phelan paid a replacement water assessment ("RWA") for the amounts it extracted. (AA 110.) The RWA would be used to pay for the cost of importing water to the AVAA basin to replace the water extracted by Phelan, thus neutralizing the impact of Phelan's pumping on the basin. (RA 18.) Phelan was not a party to this settlement. (*Ibid.*)

In the fall of 2015, the trial court commenced a sixth phase of the trial on the proposed Physical Solution. The trial court heard evidence from a historian on the overdraft conditions in the area; it also heard evidence from several experts, including experts in hydrology and civil engineering, concerning the efficacy of the proposed Physical Solution to bring the basin back into hydrologic balance. (RA 19.)

Although Phelan presented no affirmative evidence during the Phase 6 trial, it nevertheless argued that the trial court should make numerous modifications to the proposed Physical Solution. Among other things, Phelan asserted that it should be permitted to pump up to 1,200 afy without

paying a RWA for such water. Phelan claimed to hold appropriative rights to pump such water under its "municipal priority" theory; it also claimed such water as return flows. (RA 19.)

The trial court's statement of decision for the Phase 6 trial concluded that Phelan lacked an appropriative right to draw water from the AVAA because the longstanding overdraft conditions in the basin meant there was no surplus water for Phelan to appropriate. Trial court similarly rejected Phelan's claim to returns flows on the ground that such a claim is limited to water imported to the basin, which Phelan has never done. (RA 20.)

E. The Final Judgment and Adoption of the Physical Solution

The trial court's final judgment, which incorporated its findings from the prior phases and the trial of Phelan's claims, found that, because the native safe yield was well below the amounts used for reasonable and beneficial purposes by parties with overlying, appropriative, prescriptive, or reserved rights, it was necessary to allocate the native safe yield among these rights holders to protect the AVAA basin for existing and future users. (RA 20.) The trial court concluded that the evidence presented supported the conclusion that the Physical Solution, which required these rights holders to severely reduce the amount of water they used and created an overarching water management plan for the AVAA basin, fairly allocated the available water supplies and would protect the AVAA basin while preserving the

ability of existing rights holders to continue using the available water. (RA 21.)

With respect to Phelan, the trial court found that Phelan failed to establish that it had acquired an appropriative right or any other right in the AVAA's safe yield. (AA 72, ¶3f; RA 20.) The judgment nevertheless approved Phelan's ability, as permitted by the Physical Solution, to pump up to 1,200 afy, provided that Phelan paid a RWA for such water so that the water thus extracted could be replaced by imported water. (AA 110, ¶6.4.1.2.)

F. Creation of the Watermaster

The judgment provides for the creation of the Watermaster to administer the provisions of the judgment. (AA 40, ¶3.5.52.) The Watermaster's administrative duties include, among other things, the imposition and collection of RWAs on those parties required to make such payments under the provisions of the judgment. (AA 46, ¶9.2.)

G. Phelan's Appeal of the Judgment

Phelan appealed the judgment, asserting the trial court erred in finding that it lacked any right to pump water from the basin. This Court affirmed the judgment as to Phelan in its entirety, holding that the judgment was amply supported by the evidence presented, that the trial court correctly rejected Phelan's claim that it had cognizable water rights as an appropriator for municipal purposes, and that the trial court did not err in rejecting Phelan's

claims to return flows. (RA 9, 50-51.) As a result of this Court's decision, it has now been finally adjudicated that Phelan has no rights – overlying, appropriative or prescriptive – to basin groundwater.

H. Phelan's Post-Judgment Motion to Avoid Payment of RWAs for Water Extracted Phelan in 2016 and 2017

While Phelan's appeal was pending, Phelan continued to pump water from the basin. The Watermaster appointed by the trial court, the respondent herein, indicated an intent to impose a RWA on Phelan for such water. Phelan filed a motion with the trial court for a declaratory order that it was not required to pay a RWA for the water that it pumped from the basin in 2016 and 2017. (AA 7-58.) Phelan's motion was opposed by the Watermaster and by Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Quartz Hill Water District, Littlerock Creek Irrigation District, and Palm Ranch Irrigation District. (AA 60-180, 184-235.)

Phelan's motion was based on the rampdown provisions set forth in Paragraph 8 of the judgment. These provisions required pumping in the basin to be gradually reduced over a seven-year period to bring the basin into hydrologic balance. (AA 112, ¶8.2, 8.3.) Paragraph 8.3 of the judgment provides for a two-year grace period from the payment of a RWA, after which, in 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." (AA 112, ¶8.2.)

Although Phelan has no legal right to pump water from the basin, and is not subject to, or affected by, the rampdown provisions – Phelan's ability to pump water from was Basin was created solely by Paragraph 6.4.1.2 of the judgment – Phelan asserted that it should be afforded a two-year grace period from paying a RWA for the water it pumped in 2016 and 2017. (AA 7-17.)

The trial court rejected Phelan's argument, holding that the rampdown provisions, including the grace period thereto, do not apply to Phelan. In reaching this conclusion, the trial court made the following findings:

- Phelan has no water rights whatsoever to groundwater in the Antelope Valley Basin. (AA 264.)
- Phelan's service area is entirely outside the Antelope Valley Basin's adjudicated boundaries. (AA 264.)
- 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)." (AA 264.)
- Notwithstanding Phelan's lack of any pre-existing right to pump water from the basin, the judgment permits Phelan a specifically conditioned right to pump basin groundwater, up to a quantified limit, and subject to an unqualified duty to pay replacement water assessments for that

production, which is entirely exported outside of the basin's jurisdictional boundaries. (AA 264.)

- "As a party not having a right to a correlative share of the water in the aquifer, Phelan also has no obligations or other burdens or role in the rampdown process of the rampdown period," and "because Phelan has no rampdown obligations, the provisions relieving a producer of the obligation to pay a replacement water assessment for pumping over its reduced pumping rights has no relevance or impact on Phelan." (AA 266.)

- Expert testimony at trial established that the ability of the Physical Solution to bring the basin into balance was dependent on Phelan being excluded from the RWA grace period. (AA 267.)

On the basis of these findings, among the others, the trial court determined that the two-year grace period embedded in the rampdown procedures did not apply to Phelan. (AA 268.)

I. The Instant Appeal

The trial court's order denying Phelan's motion was entered on April 27, 2018. (AA 262.) Phelan filed this appeal on May 29, 2018. (AA 320.)

III. LEGAL ARGUMENT

A. Standard of Review

The general rules for interpreting a trial court's judgment are the same as those applicable to the interpretation of a writing. (*Southern Pacific Pipelines, Inc. v. State Bd. of Equalization* (1993) 14 Cal.App.4th 42, 49.)

Appellate review of the trial court's interpretation of a writing is governed by the settled rule that where extrinsic evidence has been properly admitted as an aid to the interpretation of a contract and the evidence conflicts, a reasonable construction of the agreement by the trial court which is supported by substantial evidence will be upheld. (*In Re Marriage of Fonsteen* (1976) 17 Cal.3d 738, 746.)

The trial court in this case considered extrinsic evidence in interpreting the judgment. (AA 265.) This evidence consisted of the trial court's statements of decision for the various phases of the trial, the evidence presented during the trial (principally expert testimony) relating to the approval of the Physical Solution, and "the entirety of the physical solution" and the judgment. (*Ibid.*) Phelan challenges the sufficiency of that evidence (AOB 41-43) and complains that it was misconstrued by the trial court. (AOB 25-26.)

The rules governing substantial evidence review are well settled in the case law. All evidentiary conflicts must be resolved in favor of the judgment, and all legitimate and reasonable inferences must be indulged in to uphold the judgment if possible. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) When two or more inferences can be deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trier of fact. (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 696-697.) If

the evidence so viewed is sufficient as a matter of law, the judgment must be affirmed. (*Estate of Teed* (1944) 25 Cal.2d 520, 526-527.) The substantial evidence rule applies equally to lay and expert testimony. *People ex rel. Brown v. Tri-Union Seafoods LLC* (2009) 171 Cal.App.4th 1549, 1567.)

The general rules of appellate review also apply to the court of appeal's review of a trial court's interpretation of a written instrument. (*Dicola v. White Brothers Performance Products, Inc.* (2008)158 Cal.App.4th 666.) The most fundamental rule of appellate review is that an appealed judgment is presumed to be correct. (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 956.) "All intendments and presumptions are indulged to support [a judgment] on matters to which the record is silent, and error must be affirmatively shown." (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

An appealed judgment will also be affirmed if it is correct on any theory, even if the trial court's reasoning is incorrect. (*J.B. Aguerre, Inc. v. American Guar. & Liab. Ins. Co.* (1997) 59 Cal.App.4th 6, 15-16.) "No rule of decision is better or more firmly established by authority, nor one resting upon a sounder basis of reason and propriety, than that a ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right on any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved

the trial court to its conclusion." (*Perlin v. Fountain View Management, Inc.* (2008) 163 Cal.App.4th 657, 663-664.)

B. The Trial Court Correctly Determined That The Two-Year Grace Period for the Payment of RWAs Does Not Apply To Phelan

Although both the trial court and this Court have ruled that Phelan has no legal rights to any water in the basin, Phelan argues in this appeal that it should be permitted to pump water from the basin for two years after the entry of the judgment against it, without paying for the replacement of the water it takes, by availing itself of the two-year grace period from the payment of RWAs applicable to parties who *do* have production rights to the Basin's groundwater and who are being compelled by the judgment to rampdown those rights. Phelan's argument is based on an isolated reading of Paragraph 8.3 of the judgment without considering the other provisions and purposes of the judgment as a whole.

1. The Trial Court Properly Considered The Entire Judgment in Interpreting The Applicability of Paragraph 8.3 to Phelan

The trial court properly determined that the applicability and purposes of the rampdown provisions of the judgment must be determined from the language of the judgment as a whole. "While Phelan points to the express language of Paragraph 8.3, as the beginning and end of the inquiry, it is necessary to look at the entirety of Paragraph 8 and all of its subparts (as well as the entirety of the physical solution, including the entire rampdown

process) to evaluate Phelan's position." (AA 264-265.) The trial court further stated that, "in ascertaining the intent of the judgment and the language used in its interpretation, it is necessary to consider the court's statements of decision, the evidence upon which the court based the approval of the physical solution, and the entirety of the physical solution and the judgment." (AA 265.)

The trial court was indisputably correct in holding that its task was to ascertain the purposes and intent of the judgment, and that in doing so it was required to consider the *entire judgment* and the circumstances of its making.

It is well established that in interpreting a writing the paramount consideration is to give effect to the intentions of the parties. (Civ. Code § 1636; *Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1240). The whole of the writing is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other. (Civ. Code § 1641.)

In interpreting a judgment, "[n]o particular part or clause in the judgment is to be seized upon and given the power to destroy the remainder if such effect can be avoided." (*In re Marriage of Richardson* (2002) 102 Cal.App.4th 941, 949.) Instead, "[t]he entire document is to be taken by its four corners and construed as a whole to effectuate the obvious intention." (*Ibid.*) Particular clauses of a contract are subordinate to its general intent. (Civ. Code § 1650.) Words in a contract which are wholly inconsistent with

its nature, or with the main intention of the parties, are to be rejected. (Civ. Code § 1653.) Moreover, "An agreement that is susceptible to more than one interpretation is interpreted to make it lawful, operative, definite, reasonable, and capable of being performed, if it can be done without violating the intention of the parties." (Civ. Code §1643.) A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates. (Civ. Code § 1647.)

In following these rules, the trial court reached the unsurprising conclusion that Phelan, lacking any legal right to the basin's groundwater, has no right to take such water for two years without paying for the replacement of the water taken: "While the first sentence in Paragraph 8.3 does specifically eliminate the replacement water assessment during the first two years of the rampdown period, and in a vacuum might appear to support Phelan's argument, the second sentence makes clear to whom the relief applies: '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 . . . any amount produced over the required production shall be subject to the replacement water assessment." (AA 265.)

The trial court proceeded to find that "the physical solution requires quantifying the Producers' rights within the basin which will reasonably

allocate the Native Safe Yield. Phelan was found not to have any correlative or other rights to native yield, and it had acquired no prescriptive right to the use of such water. The aquifer was, and has long been, in severe overdraft at the time when Phelan first began pumping from its well in the adjudication area in 2005. Phelan's only right to pump water is under the provisions of Paragraph 6.4.1.2 of the judgment, which provides that Phelan may pump 1,200 acre-fee per year provided it pays RWAs for the replacement cost of such water. Apart from this option to pump water that it pays for provided in the Judgment, Phelan has no right to the pump groundwater from the Basin." (AA 266.)

The trial court further found that "As a party not having a right to a correlative share of the water in the aquifer, Phelan also has no obligations or other burdens or role in the rampdown process or the rampdown period. Consequently, because Phelan has no rampdown obligations, the provisions relieving a producer of the obligation to pay a water replacement assessment for pumping over its reduced pumping rights has no relevance or impact on Phelan. Only parties subject to the rampdown are required to reduce the amount of water pumped over the rampdown period at their own cost and pay a replacement water assessment only if they pump more than their reduced right." (AA 266.)

The trial court pointed out that "the replacement water assessment specified in Paragraph 9.2 is designed to ensure that as the various producers'

water rights are reduced, water used above the reduced right will result in an assessment to permit the Watermaster to replace that excess water with imported water. Phelan has no rights, is not obligated to engage in pumping reduction, and is permitted to produce and pay for up to 1200 acre-feet a year. The rampdown provisions do not apply to Phelan which has no right to produce water from the aquifer without paying for replacement water." (AA 266.)

The trial court went on to find that "Paragraph 6.4.1.2 in effect permits Phelan to pay for water to replace all of the water that it pumps out of the adjudication area so long as it nets out the water pumped by water to be replaced. But that does not make Phelan a water producer of right from the native safe yield. The specific language of 6.4.2.1 permits Phelan to pump "up to 1200 acre-feet per year" so long as it causes no material injury to the native safe yield and so long as it pays a water replacement assessment so that the water it removes can be returned by purchased water acquired by the Watermaster. Because Phelan has no right to pump water from the native safe yield without paying for the same, it is not a water producer as defined in Paragraph 5.1 et seq." (AA 267.)

The trial court, which was in unique position to ascertain its own intent in adopting the Physical Solution, correctly interpreted the judgment. Paragraph 8.3 of the judgment specifically applies to "the amount that each Party may Produce from the Native Safe Yield." Paragraph 8.3 does not

apply to Phelan because it was found to have no pre-existing right to any part of the basin's Native Safe Yield. The judgment instead provides that "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" (AA 72.)

Phelan's right to pump under the Physical Solution arises solely from Paragraph 6.4 of the judgment, which sets forth an injunction barring all parties from exporting water from the basin except as provided for in Paragraph 6.4 and its subparagraphs. (AA 110) Paragraph 6.4.1.2 states that the injunction does not apply to Phelan's export of water from the basin, provided that Phelan's production does not exceed 1,200 afy, causes no material injury to the basin, and is offset by Phelan's payment of a RWA for the replacement of the water exported. (AA 110.) Paragraph 6.4.1.2 does not provide for a grace period; at all times Phelan must comply with its provisions or be subject to the injunction. Phelan can avoid the injunction against exporting groundwater from the basin *only* if it satisfies all three requirements set forth in Paragraph 6.4.1.2, including the unqualified requirement that Phelan must pay a RWA for all of the water that it pumps from the basin.

The trial court's interpretation of the judgment also comports with the common law and statutory principle that a particular intent will control over a general intent that is inconsistent with it. "Under well-established principles

of contract interpretation, when a general and a particular provision are inconsistent, the particular and specific provision is paramount to the general provision." (*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] and Civil Code 3534 [''particular expressions qualify those which are general.") The provisions of Paragraph 6.4.1.2, which apply specifically and only to Phelan, control over the general provisions of Paragraph 8.3, which do not mention Phelan and apply only to those parties whose Pre-Rampdown Production rights are subject to the rampdown.

Considered as a whole, and applying the well-established rules of contractual interpretation, it is clear that the judgment does not give Phelan the right to take water that does not belong to it for two years without paying for it. Phelan offers no explanation for why the trial court would make such an inequitable order providing Phelan with an undeserved windfall and causing unmitigated harm to the aquifer.

2. The Trial Court Properly Considered the Entire Record in Interpreting the Judgment

Phelan complains that the trial court looked beyond the judgment to interpret Paragraph 8.3 without first determining that the judgment was ambiguous. This argument lacks merit because the trial court clearly

indicated in its order that Paragraph 8.3 is susceptible to more than one interpretation. (AA 265.) In addition, the trial court is presumed, under the doctrine of implied findings, to make all findings necessary to support its order. (*Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

Phelan does not dispute that, where an ambiguity exists, the court may examine the entire record to determine the judgment's scope and effect. (*In re Marriage of Richardson* (2002) 102 Cal.App.4th 941, 949.) The court may also "refer to the circumstances surrounding the making of the order or judgment, and to the condition of the cause in which it was entered." (*Ibid.*)

A written provision is ambiguous if it is capable of two or more reasonable constructions. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18.) The test for the admissibility of extrinsic evidence is not, however, whether it appears to the court that the writing is plain and unambiguous on its face. (*WYDA Associates v. Merner* (1996) 42 Cal.App.4th 1702, 1710.) The test instead is whether the extrinsic evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible. (*Ibid*; *Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37. Extrinsic evidence is therefore admissible not only where it is obvious that a contract term is ambiguous, but also to expose a latent ambiguity. (*Southern Pacific Transportation Co. v. Sana Fe Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1241.) Indeed, it is reversible error to refuse to consider extrinsic evidence

upon concluding that an agreement is clear on its face. (*Pacific Gas*, *supra*, 69 Cal.2d at pp. 39-41; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal. App. 3d 1113, 1143.)

As a result of these rules, the trial court is required preliminarily to consider all credible extrinsic evidence bearing on whether the instrument could or could not reasonably support the proposed meaning. (*Southern Pacific Transportation Co. v. Sana Fe Pipelines, Inc.*, *supra*, 74 Cal.App.4th at 1241.) If, in light of the extrinsic evidence, the trial court decides the language is "reasonably susceptible" to the meaning urged, it should consider the evidence in aid of construing the disputed language. (*Id.* at 1241-1242.)

In this case, the trial court correctly considered the judgment as a whole and certain extrinsic evidence (the court's statements of decision and the evidence upon which the court based the Physical Solution) to ascertain the judgment's intent and purposes. (AA 265.) The court's consideration of such evidence was proper to show that Paragraph 8.3, though not expressly excluding (or including) Phelan, applies only to the parties whose pre-litigation rights to pump are subject to the rampdown provisions.

The trial court found the evidence presented at trial showed that permitting Phelan to pump water for two years without replenishment via a replacement water assessment would adversely affect the basin and undermine the purposes of the judgment. (AA 267.) The judgment and Physical Solution were crafted on the basis of the evidence and expert

testimony presented at trial concerning the pumping reductions necessary to bring the basin into hydraulic balance. (*Ibid.*) Phelan's pumping was not considered in crafting the Physical Solution because it was intended that such pumping would have no net impact on the basin. (*Ibid.*) In that regard, the trial court found: "The rights granted to Phelan were only to be a purchaser of water so that its use could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as either a plus or a minus – it was intended to have no net impact. If, as it requests, it is not required to pay for water pumped in 2016 and 2017, its pumping would contribute to the overdraft by pumping water to which it has no right." (AA 267.) The trial court's consideration of this evidence to ascertain the purposes and meaning of the judgment was entirely consistent with the rules of contractual interpretation and should be affirmed.

C. Phelan's Omission From Paragraph 8.3 Does Not Indicate That The Stipulating Parties and The Trial Court Intended Paragraph 8.3 To Apply To Phelan

Phelan's next argument is that the Stipulating Parties and/or the trial court could have added language to Paragraph 8.3 to make it clear that its provisions do not apply to Phelan. (AOB 30-31.) This assertion is meritless for several reasons.

First, as the trial court found, and as discussed herein, the judgment, read as a whole, does make clear that the two-year grace period to the

rampdown procedures is applicable only to the parties whose pumping rights are curtailed by those procedures, which does not include Phelan.

Second, although Phelan implies that the Stipulating Parties and the trial court made a conscious decision not to mention Phelan in Paragraph 8.3, Phelan offers no evidence supporting this assertion. Nothing in the record indicates or suggests that the Stipulating Parties or the trial court foresaw that Phelan would make the astonishing argument that the judgment, despite confirming that Phelan has no legal right to pump groundwater from the Basin, nevertheless permits Phelan to pump such water without paying for the water to be replaced. The fact that Phelan is not mentioned in Paragraph 8.3 does not in any way show that the Stipulating Parties or the trial court intended to include Phelan in its provisions.

Finally, if Phelan believed, however unreasonably, that it should have been permitted to take water that did not belong to it for two years without paying for it, it could have asked to have this right expressly provided for in the judgment, and to have an exception for such pumping made to the injunction. The record does not show that Phelan made either request, almost certainly because Phelan was aware that both requests would have been firmly rejected.

D. The Rights of Boron Community Services Water District Have No Bearing On Phelan's Rights Under the Judgment

Phelan complains that Boron Community Services District ("Boron") also transports water outside of the adjudication area, like Phelan, but is not excluded from the RWA grace period like Phelan. (AA 39.) Pursuant to Paragraph 5.2.2 of the judgment, Boron is entitled to produce up to 78 acre-feet per year without having to pay RWAs on those Imported Water Return Flows. (AA 107, ¶ 5.2.2.)

Phelan's argument lacks merit because Boron's situation is entirely different from Phelan's. Unlike Phelan, which was found to have no legal claim to the Basin's groundwater, Boron was adjudicated to have a legal right to a portion of the Basin's native yield. (RA 127.) Since Boron has such rights and Phelan does not, it is not surprising that Phelan is required to pay RWAs and Boron is not.

In addition, Boron has the right to pump return flows from water imported to the Basin that augments the basin's groundwater. Paragraph 5.2.2 provides that any party that uses water imported into the watershed of the basin in such a way that the water augments the basin's supply is entitled, under certain conditions, to produce such water. (AA 107.) All water imported to the basin through AVEK and not specifically allocated to a party in the judgment is deemed to belonged exclusively to AVEK. The exception to this is Boron, which is entitled to produce, from imported water which has

been demonstrated to augment the basin's supply, up to 78 acre-feet per year based on a formula set forth in the judgment. (AA 108.) Because Boron's production of return flows is limited to water that has been imported to the basin and augments the basin's groundwater, Boron's production of these return flows does not harm the Basin.

In contrast, the groundwater pumped by Phelan comes directly out of the Basin's native yield and would cause harm to the Basin unless the water is replaced from an outside source. The RWAs required to be paid by Phelan enable the Watermaster to purchase such replacement water. The fact that Boron is treated differently under the judgment does not in any way impugn the trial court's determination that Phelan is required to pay RWAs for all of the water that it pumps from the Basin.

E. The Contribution of Other Parties to the Basin's Overdraft Has No Bearing On Phelan's Obligation To Pay a RWA for the Water It Exports From the Basin

Phelan next complains that pumping in 2016 and 2017 by other parties to the judgment would also cause harm to the Basin, but these parties received the benefit of the RWA grace period and Phelan did not. Consequently, Phelan asserts, "harm to the Basin" should not be a factor in finding that Phelan cannot avail itself of the two-year grace period for paying RWAs afforded to some of the other parties. (AOB 40-41.)

In making this assertion, Phelan continues to ignore the fundamental difference between itself and the parties to which the two-year grace period

applies. Unlike Phelan, these other parties had the legal right to produce groundwater from the basin before the judgment was entered; the judgment merely confirmed those rights. The Physical Solution restricts their preexisting lawful rights by progressively limiting the amount of water that they can pump without paying RWAs over a seven-year period. To afford these parties an opportunity to prepare for this, the Physical Solution provides them with a two-year grace period to reduce their water consumption or take other appropriate steps to prepare for the forced restrictions to their pumping.

Phelan's situation is entirely different. Unlike the parties subject to Paragraph 8.3, Phelan is not being forced by the judgment to gradually reduce its legal pumping rights; Phelan has no such rights. Whereas the judgment constitutes a very considerable restriction of the other parties' rights, it does not restrict Phelan's rights in any way. The two-year grace period is simply a hiatus in the restrictions being imposed on the parties who have the legal right to pump water from the Basin. Since these restrictions do not apply to Phelan or affect it in any way, the two-year hiatus to the restrictions also do apply to Phelan.

The impact of pumping by the owners of the legal right to do so during the two-year grace period for the payment of RWAs, whether it causes short-term harm to the basin or not, has no effect on Phelan's rights under the judgment. The grace period was effectively a compromise between the needs

of the basin and the rights of the parties who are entitled by law to pump water from the basin. Since Phelan has no such entitlement, it was not a part of this compromise. The trial court understandably was unwilling to allow a party with no pumping rights to produce water from a basin that is in overdraft unless such production was mitigated by replacement water. The trial court accordingly determined that Phelan should only be permitted to pump water "so long as it causes no material injury to the native safe yield and so long as it pays a water replacement assessment so that the water it removes can be returned by purchased water acquired by the Watermaster." (AA 267.)

F. Substantial Evidence Supports the Trial Court's Factual Finding That Allowing Phelan To Extract Groundwater From the Basin Without Paying A RWA Would Contribute to Basin Overdraft

Phelan's final attack on the order is to challenge the sufficiency of the evidence supporting the trial court's finding that pumping by Phelan for two years without replenishment via a replacement water assessment would adversely affect the basin. (AOB 41-43.) As previously discussed, the trial court found that the judgment and Physical Solution were crafted on the basis of the evidence and expert testimony presented at trial concerning the pumping reductions necessary to bring the basin into hydrologic balance. Phelan's pumping was not considered in crafting the Physical Solution because it was intended that such pumping, which would be offset by the

payment of a RWA, would have no net impact on the basin. Consequently, allowing Phelan to pump without the payment of a RWA would contribute to the overdraft contrary to the purposes of the judgment and cause harm to the basin. (AA 267.)

The trial court's findings are abundantly supported by the evidence. The record shows that the trial court heard testimony from several experts concerning the Physical Solution. Dr. Dennis Williams, a geologist, hydrogeologist and groundwater hydrologist, testified that pumping at existing levels (pre-dating the Physical Solution) would continue to degrade and cause undesirable results in the basin, but that the Physical Solution would bring the basin into balance and stop undesirable results, including land subsidence. (AA 161; RA 24.) Dr. Williams used computer modeling to project the impact on the AVAA's hydrologic balance over the next 50-year period under different scenarios. His first two scenarios (based on average and drought conditions) modeled the long-term impact on the basin without reduced pumping by current users, including Phelan, as contemplated by the proposed Physical Solution. (RA 24-25.) Dr. Williams' models showed that in either drought or average conditions such pumping would cause adverse impacts to AVAA basin. (RA 25.)

Dr. Williams then used a computer model to calculate the long-term impact on the AVAA basin if the reduced pumping and other measures of the Physical Solution were adopted by the trial court. Dr. Williams

concluded that under normal or drought conditions implementation of the Physical Solution would stabilize the basin's hydrological balance. (RA 25.) Charles Binder, a civil engineer who acted as a watermaster for another watershed, similarly testified that that the proposed Physical Solution would bring the basin back into hydrological balance. (RA 19, 23.)

With respect to Phelan, Dr. Williams testified that his modeling showed that Phelan's pumping of 1,200 afy from its well within the AVAA under average conditions would cause a net loss to the AVAA groundwater supplies of 700 afy. (RA 25.) Phelan's own expert witness, 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 AVAA for use in Phelan's service area which is entirely outside of the AVAA. (AA 149.)

The experts' testimony presented at trial strongly supports the trial court's finding that Phelan's pumping in 2016 and 2017, unless offset by the payment of a RWA for the purchase of imported water, would cause harm to the basin's aquifer. This testimony is substantial evidence that the restrictions and requirements set forth in the Physical Solution, including the requirement that Phelan pay a RWA for the water that it extracts from the basin, is necessary to bring the basin back to hydrologic balance. The experts' testimony is also substantial evidence that Phelan's pumping in 2016 and 2017 – indeed, at any time -- would diminish the basin's groundwater

unless offset by the payment of a RWA for the purchase of replacement water.

Phelan complains that none of the experts specifically testified about the effect that Phelan's participation in the RWA grace period would have on the basin achieving balance. (AOB 42.) The reason for this, as the trial court explained in its order, was that under the Physical Solution, Phelan's water use was neither "a plus or minus – it was intended to have no impact" on the basin because of the requirement that all such use be offset by the payment of a RWA. (AA 267.) The absence of such specific testimony is not evidence that Phelan's pumping of groundwater in 2016 and 2017 did not adversely affect the basin. The experts' testimony presented at trial is consistent with the trial court's order and showed that Phelan's extraction of water from the AVAA basin at any time would diminish the basin's recharge unless offset by the payment of a RWA.

Phelan finally argues that Dr. Williams "looked at the rampdown period as five years, not seven, making the two-year Replacement Water Assessment period irrelevant to his opinion." (AOB 43.) This assertion does not advance Phelan's position. While it is true that the pumping restrictions set forth in the rampdown procedures take place over the last five years of the rampdown, Dr. Williams' recognition of this fact has no bearing on his opinions concerning the necessity of implementing the Physical Solution, which includes the requirement that Phelan pay a RWA for the water it

extracts out of the basin, in order to bring the basin back into balance. It also does not impugn his opinion, corroborated by Phelan's own expert, that Phelan's extractions out of the basin adversely affect the aquifer.

The evidence presented amply supports the trial court's finding that "[i]f, as [Phelan] requests, it is not required to pay for water pumped during 2016 and 2017, its pumping would contribute to the overdraft by pumping water to which it had no right." (AA 267.) This finding should therefore be affirmed by this Court.

IV. CONCLUSION

Despite finding that Phelan has 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 AVAA for delivery to its service area outside of the AVAA. This right, however, was specifically and without exception conditioned on this production causing no material injury to the basin and upon the payment of a RWA to cover the cost of replacing the water produced. The trial court was accordingly correct in ruling that Phelan must pay a RWA for its production in 2016 and 2017 in accordance with Paragraph 6.4.1.2 of the judgment.

For all of the foregoing reasons, the trial court's April 26, 2018 order should be affirmed in its entirety.

Dated: August 24, 2021 PRICE, POSTEL & PARMA LLP

By: _____

Craig A. Parton
Timothy E. Metzinger
Counsel for Respondent
Antelope Valley Watermaster

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1).)

I, the undersigned appellate counsel, certify that this brief consists of 9,485 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word computer program used to prepare the brief.

Dated: August 24, 2021 PRICE, POSTEL & PARMA LLP

By: _____
Timothy E. Metzinger
Counsel for Respondent
Antelope Valley Watermaster

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.

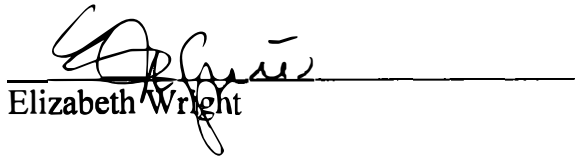
On August 24, 2021, I served the foregoing document described as **RESPONDENT'S BRIEF** on all interested parties in this action as follows:

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

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

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

Executed on August 24, 2021, at Santa Barbara, California.



Elizabeth Wright