

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

RESPONDENT'S APPENDIX

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Exhibit 1

CERTIFIED FOR PARTIAL PUBLICATION*

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

Coordination Proceeding
Special Title (Rule 3.3550(c))
ANTELOPE VALLEY GROUNDWATER CASES[†]

PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT,

Cross-complainant and Appellant,

v.

CALIFORNIA WATER SERVICE COMPANY et
al.,

Cross-defendants and Respondents.

F082094

(JCCP No. 4408)

OPINION

APPEAL from a judgment of the Superior Court of Los Angeles County. Jack Komar,[‡] Judge.

*Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts I., III., and IV. of the Discussion.

[†]*Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Los Angeles County, No. BC325201); *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Kern County, No. S-1500-CV254348); *Wm. Bolthouse Farms, Inc. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC353840); *Diamond Farming Co. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC344436); *Diamond Farming Co. v. Palmdale Water Dist.* (Super. Ct. Riverside County, No. RIC344668); *Willis v. Los Angeles County Waterworks District No. 40* (Super. Ct. Los Angeles County, No. BC364553); *Wood v. Los Angeles County Waterworks District No. 40* (Super. Ct. Los Angeles County, No. BC391869).

[‡]Retired judge of the Santa Clara Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Aleshire & Wynder, June S. Ailin and Nicolas D. Papajohn for Cross-complainant and Appellant.

Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for Cross-defendant and Respondent Palmdale Water District.

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Mary Wickham, County Counsel, Warren R. Wellen, Deputy County Counsel; Best Best & Krieger, Eric L. Garner, Jeffrey V. Dunn, and Wendy Y. Wang for Cross-defendant and Respondent Los Angeles County Waterworks District No. 40.

Kuhs & Parker and Robert G. Kuhs for Cross-defendants and Respondents Tejon Ranchcorp, Tejon Ranch Company and Granite Construction Company.

Law Offices of LeBeau Thelen, and Bob H. Joyce for Cross-defendants and Respondents Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC.

Michael N. Feuer, City Attorney; Kronick, Moskovitz, Tiedemann & Girard and Eric N. Robinson for Cross-defendants and Respondents City of Los Angeles and Los Angeles World Airports.

Venable and William M. Sloan for Cross-defendant and Respondent U.S. Borax, Inc.

Richards, Watson & Gershon and James L. Markman for Cross-defendant and Respondent Antelope Valley--East Kern Water District.

Ellison, Schneider, Harris & Donlan and Christopher M. Sanders for Cross-defendants and Respondents Los Angeles County Sanitation Districts Nos. 14 and 20.

Zimmer & Melson and Richard Zimmer for Cross-defendants and Respondents Wm. Bolthouse Farms and Bolthouse Properties, LLC.

-ooOoo-

Over 20 years ago, the first lawsuits were filed that ultimately evolved into this proceeding known as the Antelope Valley Groundwater Cases (AVGC). The AVGC proceeding litigated whether the water supply from natural and imported sources, which replenishes an alluvial basin from which numerous parties pumped water, was inadequate to meet the competing annual demands of those water producers, thereby creating an “overdraft” condition. Numerous parties asserted that, without a comprehensive adjudication of all competing parties’ rights to produce water from and a physical solution for the aquifer, this continuing overdraft would negatively impact the health of the aquifer. Phelan Piñon Hills Community Services District (Phelan) ultimately became involved in the litigation as one of the thousands of entities and people who asserted they were entitled to draw water from the aquifer.

After the Judicial Council ordered all then-pending lawsuits consolidated into this single adjudication proceeding, the trial court embarked on an 11-year process in which it, seriatim, defined the geographical boundaries for the Antelope Valley Adjudication Area (AVAA) to determine which parties would be necessary parties to any global adjudication of water rights, and then determined that the aquifer encompassed within the AVAA boundaries (the AVAA basin) had sufficient hydrologic interconnectivity and conductivity to be defined as a single aquifer for purposes of adjudicating the competing groundwater rights claims. Its next phase found the AVAA basin was in a state of chronic overdraft because extractions exceeded the basin-wide annual “safe yield” of 110,000 acre-feet per year (afy) by a considerable margin. The next phase quantified how much water was currently being pumped by each of the major competing water

rights claimants; these annual extractions (even without considering the amounts extracted by a large class of overlying right holders known as the “Small Pumper Class”) were in excess of the safe yield for the AVAA basin. The next phase, which contemplated trial of the issues of federal reserved water rights and imported water return flow rights, was interrupted by settlement discussions, which ultimately produced an agreement among the vast majority of parties in which they settled their respective groundwater rights claims and agreed to support the contours of a proposed plan (the Physical Solution) designed to bring the AVAA basin into hydrological balance.

Phelan was not among the settling parties. Accordingly, before considering whether to approve the proposed global water allocations and Physical Solution for the AVAA basin, the court first conducted separate trials at which Phelan’s claims were litigated and resolved. Thereafter, the court held a trial on the rationale for and efficacy of the proposed Physical Solution. After finding the proposed Physical Solution was reasonable, fair and beneficial as to all parties, and served the public interest, the court approved the Physical Solution.

Phelan, which provides water to its customers who are located outside the AVAA boundaries, became subject to the AVGC litigation because a significant source of its water is pumping from a well (Well 14) located in the AVAA basin. The court’s judgment and adopted Physical Solution concluded that, while Phelan held no water rights in the AVAA basin (either as an appropriator of a surplus or by prescription), Phelan could continue operating Well 14 to draw up to 1,200 afy to distribute to its customers outside the AVAA, on condition that Phelan’s pumping causes no material harm to the AVAA basin and that Phelan pays a “Replacement Water Assessment” for any water it pumped for use outside the AVAA.

Phelan challenges the judgment, raising four claims of error. First, Phelan asserts there is no substantial evidence to support the trial court’s conclusion the Physical Solution will bring the AVAA basin into hydrological balance. Second, it argues the trial

court erred when it rejected Phelan’s claim that, even assuming the AVAA basin was in overdraft, Phelan was entitled to water rights in the AVAA basin as an “appropriator for municipal public use” under Water Code sections 106 and 106.5. Third, Phelan asserts that, assuming the existence of a “surplus” in the AVAA basin *was* a condition precedent to Phelan’s acquisition of water rights as an appropriator, the phasing of the various trials denied Phelan its due process rights to establish the AVAA basin *did* have a surplus at the time Phelan began operating Well 14. Finally, Phelan contends the trial court erred when it rejected its claim that it was entitled to credit for “return flows” and erred by imposing a Replacement Assessment Fee based on the gross amount of water extracted by Well 14.

We conclude substantial evidence supports the judgment as to Phelan, that the court correctly rejected Phelan’s claim it had cognizable water rights as an appropriator for municipal purposes, that Phelan was not deprived of its due process rights to present its claims, and that the court did not err in rejecting Phelan’s claim to return flows from native water it pumped from the AVAA basin. Accordingly, we will affirm the judgment as to Phelan.

FACTUAL AND PROCEDURAL HISTORY

Factual Setting

There is a single aquifer, consisting of several hydrologically interconnected subbasins, underlying the AVAA. That aquifer was in a state of overdraft—meaning that long-term extractions from the aquifer have exceeded the amount of water replenishing that aquifer by “significant margins”—and had been in overdraft for decades before the current litigation commenced in 1999. While localized conditions led to variable impacts from this overdraft within specific subportions of the AVAA, the overall water levels within the AVAA basin were declining, and the declining water levels have caused significant long-term damage, including subsidence and lost aquifer storage capacity. The estimated average annual safe yield from all sources of recharge (natural sources such as precipitation, external sources such as imported water, and return flows) was

110,000 afy for the AVAA basin, but the numerous parties who pumped water from that basin were annually extracting between 130,000 and 150,000 afy.

Phelan owns a parcel within the boundaries of the AVAA on which it operates Well 14. In late 2005, it started operating Well 14 and extracting water from the AVAA basin, and it first delivered water from Well 14 to its customers in 2006. Phelan is a public agency organized as a community services district supplying water to over 21,000 residents, nearly all of whom use it for domestic uses, and Phelan's source for the water it distributes is from groundwater pumped from its various wells. Phelan's entire service district is outside the AVAA, although a portion of its service district and some of its customers overlay a portion of the alluvial basin defined by the California Department of Water Resources' Bulletin 118 as the "Antelope Valley Groundwater Basin" (AVGB).

The Litigation Commences

Between late 1999 and early 2000, the first lawsuits (which ultimately evolved into the AVGC) were filed by Diamond Farming Company and Wm. Bolthouse Farms, Inc., concerning competing water rights in the aquifer. These actions, styled as quiet title actions against various public water suppliers, sought a determination of the various rights and priorities of overlying landowners and others claiming rights to extract water from the AVAA basin. Over the next several years, additional complaints and cross-complaints were filed, which evolved into the AVGC and which sought a comprehensive determination of the water rights of thousands of persons, companies, public water suppliers, and the federal government, as well as a physical solution to alleviate the alleged overdraft conditions in the AVAA and to protect the AVAA basin.

Phase 1: Determining the Geographic Boundaries of the AVAA

The trial court segmented the various issues raised by the actions and held trials on these issues in phased proceedings. In October 2006, the court conducted trial to establish the jurisdictional boundaries for the AVAA. Establishing the boundaries was essential in order to determine what parties and entities with claims to the groundwater

would be necessary parties in the litigation, as either overlying owners with usufructuary rights or as appropriators producing water from the aquifer, so that a comprehensive adjudication of all claims could be made in later proceedings. After hearing expert testimony, the court determined the boundaries of the alluvial basin as defined by the California Department of Water Resources' Bulletin 118 should be the "basic" jurisdictional boundaries for the AVAA, although it set the easternmost boundary for the AVAA at the jurisdictional line that had been previously established as the westernmost boundary in the "Mojave litigation." The court left open the possibility that areas presently encompassed within the AVAA might be excluded (if shown to lack any real connection to the AVAA aquifer), or other areas might be included, as might be warranted by further evidence.

Phase 2: Determining Hydraulic Connectivity Within the AVAA Boundaries

In the second phase, the court heard evidence to assess the hydrologic nature of the aquifer within the geographical boundaries set for the AVAA. The court specifically evaluated whether there were any distinct subbasins within the AVAA basin that lacked any hydrologic connection such that they should be treated as separate, unconnected basins for purposes of adjudication. The court concluded 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.

Phelan Intervenes

In late 2008, Phelan filed its cross-complaint alleging seven causes of action. Among its claims were (1) Phelan had an appropriative right to pump water from the AVAA because there was surplus water in that the basin's safe yield exceeds the volume pumped from the basin; (2) Phelan had "municipal priority" rights under California law "both as a result of the priority and extent of its appropriative and prescriptive rights, and as a matter of law and public policy" under statutory law; (3) Phelan had the right to the "recapture of return flows"; and (4) that some parties' use of water was unreasonable and

constituted “waste, unreasonable use or an unreasonable method of diversion or use,” and such parties’ water rights should be determined and limited to reasonable uses rather than actual uses.

Phase 3: Determining Safe Yield and Overdraft

In the Phase 3 trial, the parties litigated the safe yield for the AVAA basin and whether the area encompassed within the AVAA was in overdraft.¹ The Public Water Suppliers² (PWS), along with numerous other parties, contended the average annual extractions from the AVAA basin exceeded the relevant safe yields and that it was in overdraft. It proffered extensive testimony on average annual recharge, annual extractions, and the deleterious impacts from the chronic overdraft of the AVAA basin.

Phelan did not contest the contentions of the PWS in Phase 3 that the AVAA basin was in overdraft. Instead, Phelan sought to proffer evidence from its expert, Thomas Harder, concerning his study of the conditions in an area that encompassed both a southeast corner of the AVAA basin as well as land outside the boundaries of the AVAA.

¹In the context of an alluvial basin, “safe yield” is defined as “the maximum quantity of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result.’ The phrase ‘undesirable result’ is understood to refer to a gradual lowering of the ground water levels resulting eventually in depletion of the supply.” (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, disapproved on other grounds in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1248.) In essence, “safe yield” examines the available groundwater recharge from replenishing sources such as native precipitation and associated runoff, along with return flows from such sources, less losses incurred through natural groundwater depletions such as subsurface outflow or evaporative losses. (*City of Los Angeles, supra*, at pp. 278–279; see *Tehachapi–Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 996, fn. 3 [“Natural ‘safe yield’ is the maximum quantity of ground water, not in excess of the long-term, average, natural replenishment (e.g., rainfall and runoff), which may be extracted annually without eventual depletion of the basin”].) “Overdraft” examines whether the average annual withdrawals or diversions exceed the safe yield of a groundwater supply and would lead to ultimate depletion of the available supply. (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1272.)

²Consisting of cross-defendants California Water Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District, and Quartz Hill Water District.

Phelan contended (consistent with the PWS position) Mr. Harder would confirm that the area he studied showed pumping by Phelan and others has resulted in declining water levels in the southeast portion of the AVAA, and that “overdraft exists in the Southeast area of the [AVAA], or will exist in the near future, if groundwater pumping in this area continues at current rates or increases.”³

The court found the AVAA basin was in a state of overdraft, and that average extractions had significantly exceeded average recharge for decades, causing a steady lowering of water levels and accompanying subsidence since 1951. The court concluded the average total safe yield from all sources⁴ was 110,000 afy for the AVAA as a whole, while current actual extractions from the AVAA as a whole (ranging between 130,000 and 150,000 afy) exceeded average annual recharge. Accordingly, the court found (1) the AVAA was in overdraft and (2) the annual safe yield was a total of 110,000 afy.

Phase 4: Determining Actual Groundwater Production by Claimants

In the next phase, the court ultimately determined it would limit trial to individualized determinations of how much water the various claimants actually pumped

³The court ultimately ruled that, while Harder could testify about impacts of pumping from Well 14 because it was sited within the AVAA jurisdictional boundaries, the bulk of Harder’s proffered testimony would be excluded from the Phase 3 trial because Harder’s testimony was principally focused on pumping and return flows in areas outside the boundaries of the AVAA.

⁴It appears the *total* annual safe yield ultimately set by the court as the appropriate “quantity of pumping from the basin [that] will maintain equilibrium in the aquifer” was an amalgamation of two different components: amounts attributable to “native” water and amounts attributable to “imported” water. Various experts testified that *native* water additions (i.e., water coming into the basin from precipitation and runoff) provided new water to the AVAA basin ranging between 55,000 to 68,000 afy. When “return flows” from that new water were calculated, the PWS contended the *native* safe yield should be set at approximately 82,300 afy for the AVAA basin as a whole. However, various entities also imported additional water into the AVAA, and when that *imported* water (along with *its* return flows) was added to the native supply, the total safe yield for the AVAA basin was determined by the court to be 110,000 afy.

from the AVAA basin during the years 2011 and 2012.⁵ Based on the stipulations and evidence presented by numerous parties about the amounts pumped during the relevant time frames, including Phelan's evidence that it pumped 1,053.14 acre-feet in 2011 and 1,035.26 acre-feet in 2012 from the AVAA basin, the court determined how much water the various major stakeholders actually pumped from the AVAA basin in the relevant years. The amounts actually pumped during those sample years exceeded the previously determined safe yield.⁶

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

The Phase 5 trial bifurcated two issues for the next trial phase: (1) federal reserved water rights, and (2) any claimed rights to recapture and use any return flows from water imported into the AVAA. However, during the evidentiary presentations on the federal reserved water rights, the parties requested a recess of pending proceedings to

⁵Initially, the case management order (CMO) for the Phase 4 trial contemplated it would encompass a vast array of issues, including the issue ultimately tried (current groundwater production for the two-year period which preceded the Phase 4 trial), but it also contemplated the trial would litigate each pumper's claimed reasonable and beneficial use of water the water pumped, as well as claimed return flows from imported water and federal reserved rights. However, that CMO subsequently evolved to narrow the issue tried in Phase 4 and provided that "proof of claimed reasonable and beneficial use of the water for each parcel to be adjudicated" would only encompass "the amount of water used by each party and the identification of the beneficial use to which that amount was applied, but will not include any determination as to the reasonableness of that type of use [or] of the manner in which the party applied water to that use" The fifth amended CMO ultimately provided the "Phase [4] Trial is only for the purpose of determining groundwater pumping during 2011 and 2012. The Phase [4] Trial shall not result in any determination of any water right, or the reasonableness of any party's water use or manner of applying water to the use. The Phase [4] Trial will not preclude any party from introducing in a later trial phase evidence to support its claimed water rights All parties reserve their rights to produce any evidence to support their claimed water rights and make any related legal arguments including, without limitation, arguments based on any applicable constitutional, statutory, or decisional authority."

⁶The court found that, during the sampled years, the parties cumulatively pumped in excess of 120,000 afy even before consideration of the amounts pumped by the "Wood Class," and apparently without consideration of the amount that would be subject to any federal reserved right.

permit further settlement discussions. The parties then met and conducted settlement discussions, and in April 2014, the parties informed the court that the vast majority of the parties had reached a proposed global settlement of their respective groundwater claims. The settlement included agreement on the contours of a basin-wide groundwater management plan to implement a Physical Solution to the AVAA basin's overdraft conditions that accommodated the groundwater rights of the parties to the global settlement.

Although Phelan participated in the settlement negotiations, the parties were unable to reach agreement settling Phelan's claims to water from the AVAA basin.

Trial of Phelan's Preserved Claims

Because the parties were unable to reach a satisfactory agreement to accommodate Phelan's claims to pump water from the AVAA basin for use outside the AVAA, the court set a series of trials in which to litigate and resolve Phelan's claims for relief.

"Stage One": Trial on Phelan's Preserved Claims for Appropriative and Return Flow Rights

The court held hearings and conferences to delineate which of the claims raised by Phelan's cross-complaint should be tried next.⁷ The court opined the appropriate scope

⁷In its case management statements, Phelan indicated it had abandoned its claim of a prescriptive water right, but had seven remaining causes of action. Phelan identified three key issues that should be litigated in the next stage. First, Phelan asserted it had obtained an appropriative water right to pump from Well 14 as an appropriator of surplus water; it asserted there was a "local area" surplus in the portion of the AVAA where its Well 14 was sited because groundwater levels in the Buttes and Pearland subbasins had not changed significantly since 1951, which it contended showed a lack of overdraft in those two subbasins. Phelan alternatively asserted it was an appropriator for public use of nonsurplus water. Phelan also asserted a form of return flow "rights," arguing that the evidence would show that some of the water drawn from the AVAA basin by Well 14 returned to the AVAA basin, and that consideration of this return flow should be factored into "the overall water balance with [Phelan] receiving an offset against potentially future assessments or liabilities, anti-export provisions, or otherwise arising from the anticipated physical solution to be fashioned by the Court." (Italics omitted.) Finally, Phelan argued that although the jurisdictional boundaries established for the AVAA excluded Phelan's service area, the hydrogeologic reality was that the aquifer extended eastward (crossing over the AVAA boundaries) to encompass part of Phelan's service area, and

of issues to be tried in the first stage should include (1) whether Phelan could show it had acquired an appropriative water right by showing there was a surplus in the AVAA basin,⁸ and (2) whether Phelan could establish a return flow right from native waters that provided some support for Phelan's claims.

Trial on these aspects of Phelan's preserved claims occurred in late 2014. The parties agreed on a set of stipulated facts and exhibits. Phelan also introduced the testimony of two witnesses, including its expert hydrogeologist, Mr. Harder. The court then heard argument on and ultimately granted cross-defendants' motions for judgment. It issued a partial statement of decision on the stage one issues, which found Phelan had no appropriative right to pump from the AVAA basin because Phelan had not satisfied its burden of proof to show there was surplus water available for an appropriative use. The court specifically found the Butte subbasin (where Phelan's Well 14 is located) was adjacent to and hydrologically connected with other parts of the AVAA basin and served as a source of water recharge for the overall AVAA basin. It further found that localized

this fact should be accounted for in determining (1) whether Phelan's use of Well 14 water within its service area was subject to any anti-export prohibition and (2) whether Phelan could be credited for recaptured return flows. Thus, it appears Phelan sought trial on its second cause of action (appropriative rights to surplus water), its fourth cause of action (municipal priority to water use as against all nonmunicipal users), its sixth cause of action (declaratory relief regarding return flows from water extracted and distributed by Phelan in its service area), and elements embedded in its eighth cause of action (declaratory relief on the boundaries of the basin).

⁸The parties discussed the relevance of testimony concerning water levels in the Butte subbasin. Specifically, the parties sought to determine whether, in light of the court's decisions in Phase 2 (that there was sufficient hydraulic connectivity within the AVAA aquifer as a whole to obviate the claims that certain sections should be treated as separate basins) and Phase 3 (that the AVAA basin as a whole was in overdraft), Phelan's evidence concerning water levels in one portion of the AVAA (the Butte subbasin where Well 14 is located) was germane to Phelan's attempt to show a surplus existed in the AVAA as whole when it brought Well 14 online. The court observed that Phelan had not previously proffered evidence that the Butte subbasin was a totally separate basin lacking hydrologic connectivity to the overall AVAA basin, and therefore opined that demonstrating surplus for the AVAA as a whole (rather than in a particular section) would be required, but recognized Phelan "may have other evidence [or] may be able to demonstrate, as a matter of law, that it doesn't matter."

variations in groundwater levels within portions of the basin were insufficient to demonstrate there was surplus water in the overall AVAA basin upon which Phelan could acquire an appropriative right to water from the basin. The court also rejected Phelan's sixth cause of action, ruling Phelan had no cognizable right to pump return flows attributable to native waters that recharged the AVAA basin.

Stage Two: Trial of Phelan's Remaining Preserved Claims

The court then scheduled a trial for Phelan's remaining claims for August 2015.⁹ Phelan delineated those remaining claims as seeking declarations (1) as to its alleged appropriative rights as a municipal water provider (fourth cause of action), (2) as to its "storage" rights for imported water (fifth cause of action), and (3) as to the alleged unreasonable use of water by other cross-defendants (seventh cause of action). Phelan also sought a determination, on its third cause of action for a Physical Solution, that any Physical Solution should allow Phelan to pump up to 1,200 afy without payment of any Replacement Assessment Fee.¹⁰ Prior to this Stage Two trial, Phelan "reserved" its right to present evidence on its "unreasonable use of water" claim and indicated it would present that evidence at the pending "prove-up" hearings on the proposed Physical Solution. Accordingly, Phelan framed the issues for the Stage Two trial to be limited to whether Phelan had appropriative rights as a municipal water provider and whether any Physical Solution should allocate certain amounts of pumping to Phelan free of any replacement assessment.

⁹The court's scheduling order also set an evidentiary hearing on a proposed Physical Solution for the fall of 2015.

¹⁰Although Phelan also indicated (prior to the Stage Two trial) that it intended to pursue its eighth cause of action for a declaration of the boundaries of the AVGB, it later expressly stated this cause of action did not seek to *revise* the AVAA boundaries established in Phase 1, but was instead limited to seeking a determination that it was not an "exporter" of the water it drew from Well 14.

At this Stage Two trial, Phelan made a brief evidentiary presentation from its expert hydrologist on the claims set for hearing.¹¹ At the close of Phelan's evidence phase, a PWS party moved for judgment under Code of Civil Procedure section 631.8, but the court deferred ruling on the motion until it could hear further evidence scheduled to be heard during the Phase 6 trial on the Physical Solution.

Phase 6: The Physical Solution

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. Phelan was not among the parties to the stipulation. The proposed judgment contained an allocation of the projected safe yield among the numerous parties. Although the proposed judgment did not allocate any share of the available native safe yield to Phelan, it did specify Phelan could continue to pump up to 1,200 afy from Well 14 for use outside the AVAA as long as such pumping did not cause "material injury" to the AVAA and Phelan paid a replacement water assessment for the amounts it extracted from Well 14 and distributed outside the AVAA.

In the fall of 2015, the court held hearings on the proposed Physical Solution. After hearing evidence from a historian on the public notoriety of the overdraft conditions in the area,¹² the court heard evidence from four experts concerning the

¹¹Harder identified six wells used by Phelan to pump water from the AVGB, although only one of those wells (Well 14) was within the AVAA. He also described the amounts of water Phelan distributed to the portion of their customers who, although outside the AVAA, were atop a portion of the alluvial basin as defined by the Department of Water Resources' Bulletin 118. He also testified Phelan's pumping has had no measurable impact on the groundwater levels within the Buttes subbasin, and that groundwater levels within the Buttes subbasin has remained relatively stable. However, Harder conceded that water pumped from Phelan's wells intercepted water that would otherwise flow as recharge into the AVAA basin.

¹²Dr. Douglas Littlefield, a forensic historian, testified to a long history of published articles and technical studies showing the overdraft of water and resulting diminishing water

proposed Physical Solution. Dr. Dennis Williams, an expert with extensive experience with groundwater hydrology, opined the proposed Physical Solution would bring the AVAA basin back into balance because of its component parts: substantial reductions in pumping by existing users, importation of supplemental water, and the management and monitoring provisions. Charles Binder, a civil engineer who acted as a watermaster for another watershed, similarly testified the provisions of the judgment and proposed Physical Solution would bring the AVAA basin back into hydrologic balance. Two other experts opined the parties who received production rights under the Physical Solution were devoting the water they extracted to reasonable and beneficial uses.

Phelan presented no affirmative evidence during the Phase 6 trial. Phelan's Phase 6 trial brief did assert that, based on the evidentiary record, the court should make numerous modifications to the proposed Physical Solution. Specifically, it argued it should be allowed to pump up to 1,200 afy *without* the replenishment assessment contemplated by the Physical Solution or, alternatively, to pump 700 afy without a replenishment assessment, based on its historical pumping from all its wells (including its wells outside the AVAA boundaries) within the Buttes subbasin and the impacts of its pumping upon water levels within that subunit.¹³ It also asserted the judgment should recognize appropriate pumping rights held by Phelan were entitled to be accorded municipal priority under sections 106 and 106.5 of the California Water Code.¹⁴

levels in the areas encompassed by the AVAA (as well as attendant subsidence problems) were well known for decades.

¹³Phelan's Phase 6 trial brief also opposed certain language within the proposed Physical Solution, including characterizing Phelan as an "exporter" of water, and to the ambiguity created by certain "costs" language contained in paragraph 6.4.1.2 of the Physical Solution.

¹⁴Phelan apparently presented no evidence in support of its claim there was an unreasonable use of water by other cross-defendants and, while Phelan interposed objections to the proposed statement of decision, its objections contained no mention of this claim.

The court's Phase 6 proposed statement of decision concluded, as to Phelan's remaining claims, that Phelan lacked an appropriative right to draw water from the AVAA because the longstanding overdraft conditions in the AVAA basin as a whole meant there was no surplus water available for Phelan to acquire or enlarge an appropriative water right. It further rejected Phelan's return flow claims because such a claim is limited to return flow from imported water, and Phelan never imported water into the AVAA.

The Final Judgment and Adoption of the Physical Solution

The court's final judgment, which incorporated determinations from prior phases, found the collective demands by those holding water rights in the AVAA basin exceeded the available total safe yield of 110,000 afy (comprising a native safe yield of 82,300 afy and the balance coming from imported supplemental water supplies) for the entire basin, and that a comprehensive adjudication of all of the water rights within the AVAA basin and a water resource management plan was required to prevent further depletion of and damage to the AVAA basin. The court found (1) the United States had produced substantial evidence establishing a federal reserved water right, (2) the PWS had produced substantial evidence showing they had acquired a prescriptive right as against certain parties who had not joined in the stipulated judgment, and (3) Phelan had not shown it had acquired an appropriative water right (or any other right) in the AVAA basin's safe yield. Specifically, the court noted that, while Phelan was an overlying landowner in the AVAA basin by virtue of its ownership of the parcel on which it operated Well 14, the water it drew from that parcel was not used for that parcel but was instead used to service its customers outside the AVAA. Its final judgment approved Phelan's ability, as granted by the approved Physical Solution, to pump up to 1,200 afy subject to the payment of a replacement assessment, and found Phelan had no right to pump water from the AVAA except under the terms of that Physical Solution.

The court further found that the stipulating “Landowner Parties” and “Public Overliers” had established they possessed overlying rights to the basin’s native safe yields by producing evidence of the amounts of the basin groundwater they actually used, that such amounts were reasonable and beneficial uses of such water, and that the total amounts so used exceeded the total native safe yield.¹⁵ The court also granted final approval to a settlement for the “Small Pumper Class,” which allocated certain production rights to members of that class.

The court found that, because the native safe yield was well below the amounts used for reasonable and beneficial purposes by those with overlying, 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. The court concluded the evidence presented during Phases 4 and 6 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 made the maximum reasonable and beneficial use of the native safe yield in a manner which would protect the AVAA basin for existing and future users while preserving the ability of existing rights holders to continue using the available water.

¹⁵The court made similar findings as to a group of nonstipulating landowner parties who claimed overlying rights in the basin’s groundwater by proof of their land ownership or other interest in the basin. While this group was not signatories to the original settlement, they supported the proposed judgment and Physical Solution and agreed to reduce production under paragraph 5.1.10 of the Physical Solution to certain specified amounts. The court found these parties had shown they had an overlying right to basin water, that they had reasonably and beneficially used basin water, and that the amounts they were allocated under the Physical Solution was a severe reduction of their historical and current uses and represented amounts they applied to reasonable and beneficial uses.

DISCUSSION

I. Substantial Evidence Supports the Conclusion the Physical Solution Will Bring the AVAA Basin Into Balance*

A court may impose a physical solution to protect an aquifer from the deleterious effects of overdrafting the aquifer. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288.) “A physical solution is 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.) A court’s physical solution can reasonably regulate the use of the water by the respective rights-holders provided its provisions are “adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction” (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383 (*Peabody*)). A physical solution must consider the rights and priorities of the vested rights holders in light of the constitutional principle requiring that available water be put to beneficial use to the fullest extent possible. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1250 [“although it is clear that a trial court may impose a physical solution to achieve a practical allocation of water to competing interests, the solution’s general purpose cannot simply ignore the priority rights of the parties asserting them. [Citation.] In ordering a physical solution, therefore, a court may neither change priorities among the water rights holders nor eliminate vested rights in applying the solution without first considering them in relation to the reasonable use doctrine”].)

Phelan argues on appeal there is no substantial evidence to support the trial court’s finding that the adopted Physical Solution would bring the AVAA into hydrological

*See footnote, *ante*, page 1.

balance and thereby “prevent its ultimate destruction.” (*Peabody, supra*, 2 Cal.2d at p. 383.)

“Where findings of fact are challenged on a civil appeal, we are bound by the ‘elementary, but often overlooked principle of law, that ... the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.” (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

The testimony of a single witness, unless it is impossible or inherently improbable, will be sufficient to support the challenged findings. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465–466.) When a party asserts on appeal that a judgment lacks substantial evidentiary support, it is that party’s burden to summarize the evidence on that point—both favorable and unfavorable—and then to demonstrate how and why it is insufficient. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.)

Phelan’s insufficient evidence claim rests principally on the contention the testimony of two experts, which was offered by the proponents of the Physical Solution in Phase 6 of the underlying trial, does not provide sufficient evidence the Physical Solution would bring the AVAA into balance. The first expert, Mr. Binder, had extensive training and experience in water resource management and who (among other qualifications) served as the watermaster and the watermaster engineer to administer and enforce a similar physical solution for the Santa Margarita Watershed. Binder premised his opinion on a review of the terms of the proposed Physical Solution, the technical reports from a variety of agencies, and the court’s orders and decisions in the prior phases of the AVGC litigation. Based on his review of all these materials, Mr. Binder opined (1) the Physical Solution would result in reduced groundwater production to a level equal to

the amount of the safe yield resulting in the basin being stabilized into hydrologic balance, (2) the native safe yield plus available supplemental water supplies would be sufficient to meet total current water requirements under the allocations contemplated in the Physical Solution, and (3) the proposed judgment and Physical Solution would create a functional structure for administering the judgment and managing the groundwater basin. Binder noted the management structure included a watermaster and watermaster engineer to manage the groundwater basin, a financial plan to fund the management structure, flexible management tools to manage the basin, and retention of court jurisdiction to enforce or modify the judgment.

Dr. Williams, an expert geologist, hydrogeologist and groundwater hydrologist, and an expert on groundwater modeling and management, also concluded the proposed Physical Solution would bring the AVAA basin into hydrologic balance. Dr. Williams formed his opinion using a computer model created by the United States Geological Survey, known as a “distributed parameters” model, which he used to assess the impacts of pumping and recharging within the mapped area.¹⁶ Dr. Williams used the model to project the impacts on the AVAA’s hydrologic balance over the next 50-year period using multiple different scenarios. His first two scenarios (scenarios 1 and 1A) modeled and evaluated the long-term impacts on the AVAA basin *without* reduced pumping by

¹⁶Williams explained that, before the “distributed parameters” computer model was available, hydrologists used a “lumped parameter” model that treated the entire basin as a giant bathtub in which total inflows and outflows were used to assess storage changes. In contrast, the distributed parameters model creates a fine mesh (comprising over 60,000 individual micro-parcels or “cells” measuring 1,000 by 1,000 meters per cell with each cell having several vertical layers to reflect the depths of the relevant geological features), which was overlaid on the AVAA basin to more finely evaluate the impacts of pumping and recharge and “solve” water balances for each of the cells. The United States Geological Survey model covered a much greater area than the AVAA, so only the cells relevant to evaluating the proposed Physical Solution (primarily the cells covering the alluvial sediments in the AVAA) were activated for purposes of running the computer modeling. The model allowed Williams to input the amount of pumping for each individual pumper (whether reduced or unreduced) and assign it to a particular “cell” of the map where that pumper was operating the specific pump.

current users as contemplated by the proposed Physical Solution: scenario 1 assumed unreduced current pumping with aquifer recharge under drought conditions (where the rain and imported water recharging the AVAA basin was constricted), while scenario 1A again assumed unreduced current pumping but under average conditions where rain and imported water recharged the aquifer with the 110,000 afy of safe yield. Based on the model, he concluded either scenario would cause adverse impacts on the AVAA basin.

Dr. Williams then used the computer model to calculate the projected long-term impacts on the AVAA basin if the reduced pumping (and other measures) contemplated by the proposed Physical Solution were adopted using two more scenarios (scenarios 2 and 2A), again using parallel aquifer recharge assumptions under drought conditions (scenario 2) and under average recharge conditions (scenario 2A). Dr. Williams concluded that implementing the terms of the Physical Solution, in which existing rights holders reduced their pumping over a specified period, *would* stabilize the AVAA's hydrological balance under either scenario 2 or 2A.

Dr. Williams subsequently ran a computer modeling (which he denominated as scenario 2B) to simulate the impact on the AVAA of Phelan's pumping from Well 14 of 1,200 afy under the average recharge conditions employed in scenario 2A. He concluded such pumping from Phelan's Well 14 would cause the AVAA to have a net loss to the AVAA groundwater supplies of 700 afy.

The testimony of Binder and Williams provides ample evidence to support the finding the Physical Solution prevented the "ultimate destruction" of the AVAA basin while providing protections for the parties with paramount rights to substantially enjoy the available supplies in that basin. (*Peabody, supra*, 2 Cal.2d at p. 383.) However, Phelan asserts Dr. Williams's testimony must be disregarded in evaluating the evidentiary support for that finding because the methodology employed in his computer modeling was flawed. Specifically, Phelan asserts (1) not all of the cells in the United States Geological Survey model within the AVAA were "activated," (2) there were no

“calibration wells” in the area near Phelan’s Well 14, and (3) the modeling of the impact of pumping from Well 14 was done by moving its location to the nearest “active” cell in order to simulate such impacts. Accordingly, argues Phelan, Dr. Williams’s testimony cannot provide substantial evidence for the findings the Physical Solution would stabilize the AVAA basin and bring it into hydrologic balance because the model did not “accurately depict the workings of the groundwater basin.” We reject Phelan’s claim that Williams’s opinion must be disregarded in assessing whether substantial evidence supports the trial court’s finding for two reasons. First, Phelan acknowledges its motion to strike Williams’s testimony, which appears to have been based on essentially the same alleged imperfections in the modeling, was denied by the trial court. Phelan makes no effort on appeal to satisfy its burden of showing the denial of its motion to strike Dr. Williams’s testimony was an abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773 [“Except to the extent the trial court bases its ruling on a conclusion of law (which we review de novo), we review its ruling excluding or admitting expert testimony for abuse of discretion”].) Because we may not interfere with the broad discretion accorded to trial courts in admitting expert testimony absent a showing such discretion was clearly abused (*People v. Bui* (2001) 86 Cal.App.4th 1187, 1196), and Phelan has made no showing such discretion was clearly abused here (cf. *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281), we must presume the ruling on the motion to strike was properly denied and that the trial court therefore properly admitted and considered his testimony. Second, while Phelan makes multiple suggestions on appeal on how Williams’s computer modeling could have been more precise or comprehensive, Phelan cites no evidence those suggested improvements to the model (even if implemented) would have materially changed the results reached by the model (or Dr. Williams’s opinion based thereon) that the Physical Solution would stabilize the AVAA basin’s hydrological balance under either scenario 2

or 2A, or would have altered his opinion that pumping from Phelan's Well 14 would cause the AVAA to have a net loss to the AVAA groundwater supplies of 700 afy.

Because Phelan has not demonstrated that admitting Dr. Williams's testimony was an abuse of discretion, nor does the record contain evidence that any imperfections in the model so materially impacted his conclusions that his testimony (as admitted) should be entirely disregarded on appeal, Dr. Williams's opinion provides ample support for the judgment. Other courts that have considered arguments attacking an expert's testimony, analogous to those mounted by Phelan here, have similarly rejected such arguments on appeal. For example, in *Corona Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522, the appellants challenged whether there was substantial evidence for the trial court's determinations of the boundaries of the aquifer, and supported that challenge by detailing the evidence at trial supporting a contrary conclusion. The court, noting there was "voluminous evidence of a highly conflicting nature [and] [w]ell qualified witnesses on each side testified concerning the geology of the area, its hydrology, and the relative permeability of soils in Temescal wash, on Norco mesa, and on the Corona slope" (*id.* at p. 527), rejected the appellate claim. The *Corona* court observed the evidence created "... substantial points of agreement and also decided points of material disagreement [among the experts on] whether the entire Corona area constitutes a single underground water basin or reservoir" (*id.* at p. 528) but rejected the appellants' claim because, while the appellants' contrary claims had evidentiary support, "... there is in contradiction of [the appellants'] evidence ample proof which, if believed by the trial court, supports its conclusion that the underground reservoir embraces the entire Corona area." (*Ibid.*; accord, *Allen v. California Water and Tel. Co.* (1946) 29 Cal.2d 466, 481 [expert testimony on absence of surplus for appropriation; court rejects substantial evidence challenge because "the trial court's findings have substantial evidentiary support in the testimony of [expert] Lee and other witnesses for plaintiffs; [the appellate] attacks made by defendant upon the testimony of Mr. Lee go only to its credibility and weight; and ...

these are matters committed to the trier of the facts for determination in the case of an expert as well as of lay testimony”].)

Moreover, even assuming Phelan *had* adequately carried its appellate burden demonstrating it was a clear abuse of discretion to admit Dr. Williams’s testimony, the testimony of Mr. Binder would alone provide substantial evidentiary support for the finding the panoply of provisions in the Physical Solution would bring the AVAA into hydrological balance. Although Phelan attacks Binder’s opinions on appeal,¹⁷ Phelan did not move to strike Binder’s testimony below, nor does it articulate (apart from a peremptory allegation that his testimony must be deemed “irrelevant”) why his testimony does not provide substantial evidence to support the trial court’s conclusion the Physical Solution would protect the AVAA basin from further degradation. Because the testimony of a single witness (unless it is impossible or inherently improbable) is sufficient to support the challenged findings (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.*, *supra*, 196 Cal.App.4th at pp. 465–466), and Phelan has not shown Binder’s opinion was either impossible or inherently improbable, Binder’s opinion alone provides substantial evidentiary support for the conclusion the Physical Solution would bring the AVAA into hydrologic balance.

Phelan appears to argue our ordinary assessment of whether there is any substantial evidence to support the findings below (*Crawford v. Southern Pacific Co.*, *supra*, 3 Cal.2d at p. 429), and which requires us to view the evidence in the light most favorable to the judgment with every reasonable inference drawn in favor thereof (*Jessup Farms v. Baldwin*, *supra*, 33 Cal.3d at p. 660), is inapplicable here because Phelan contends the final statement of decision affirmatively shows the court’s determinations

¹⁷Phelan points out, for example, that certain numbers used in Binder’s analysis changed between the time he gave his deposition and the time of his trial testimony, and also claims Binder’s analysis considered nongroundwater sources in alleged contravention of a limiting determination from the Phase I trial.

were *not* based on a weighing of the conflicting evidence. Specifically, Phelan argues the final statement of decision does not catalogue each item of evidence accepted or rejected by the court (and the rationale for each such acceptance or rejection) in reaching its final determinations, and that this lacuna shows the court reached its determinations without weighing the evidence. Based on this predicate—the claim the record affirmatively shows the decision was *not* based on a weighing of the evidence—Phelan asserts we are precluded from employing the deferential substantial evidence standard to review its decision under *Kemp Bros. Construction, Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474 (*Kemp*) and *Affan v. Portofino Cove Homeowners Assn.* (2010) 189 Cal.App.4th 930 (*Affan*).

However, Phelan’s contention that alleged deficiencies in the final statement of decision requires application of some standard of review other than the deferential substantial evidence standard is first raised in Phelan’s reply brief. Ordinarily, “[p]oints raised for the first time in a reply brief will ... not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.” [Citation.] ... “Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.” [Citation.]” (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Even assuming Phelan had preserved this argument, it rests on a predicate that misconceives what is required in a statement of decision. Phelan’s argument under *Kemp* and *Affan* is predicated on its assertion that a statement of decision which does not contain a detailed discussion of all of the evidence *and* a discussion of why the court chose to credit some evidence while rejecting other evidence affirmatively shows the

court did *not* weigh the evidence in reaching its decision. However, a statement of decision is required only to set out ultimate findings rather than evidentiary ones. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125.) A trial court “is not required to respond point by point to the issues posed in a request for statement of decision. The court’s statement of decision is sufficient if it fairly discloses the court’s determination as to the ultimate facts and material issues in the case.” (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379–1380; [citation].) ‘When this rule is applied, the term “ultimate fact” generally refers to a core fact, such as an essential element of a claim.’ (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.) ‘Ultimate facts are distinguished from evidentiary facts and from legal conclusions.’ (*Ibid.*) Thus, a court is not expected to make findings with regard to ‘detailed evidentiary facts or to make minute findings as to individual items of evidence.’ (*Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1525.)” (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983.) Phelan’s argument “would require the court to make detailed findings of evidentiary facts as to each individual piece of evidence relied upon by the trial court. Under the law, [Phelan is] not entitled to such a detailed analysis.” (*People v. Dollar Rent-A-Car Systems, Inc.* (1989) 211 Cal.App.3d 119, 128.) Here, the statement of decision fairly disclosed the court’s determination as to the ultimate facts and material issues in dispute in each phase of the proceedings. Accordingly, we reject Phelan’s claim the statement of decision was too inadequate to warrant review under the substantial evidence standard.¹⁸

¹⁸This analysis renders moot Phelan’s reliance on *Kemp* and *Affan*. In both of those cases, the record affirmatively showed the trial court’s judgment was based on reasons unrelated to an assessment of the conflicting evidence. In *Kemp*, for example, a prime contractor sued a subcontractor for breach of contract and sought a pretrial right to attach order against the subcontractor’s accounts receivable, which required an affirmative showing by the prime contractor of the “probable validity” of its breach of contract claim. The court granted the attachment order, but the minute order and reporter’s transcripts showed the court granted the order *not* because the plaintiff had affirmatively shown the probable validity of its claim, but because it ruled the defendant was barred (by collateral estoppel principles) from contesting the

Phelan's final attack on the evidentiary support for adopting the Physical Solution appears to argue the evidence was insufficient because there was no evidence Phelan's pumping "substantially harms the AVAA such that Phelan should be required to pay a replacement assessment" for the amounts it pumps. However, there is substantial evidence Phelan's pumping harms the AVAA basin's water balance. Dr. Williams testified Phelan's pumping diminished the AVAA water balances by 700 AF each year, and Phelan's own expert agreed Well 14 extracts more water *from* the AVAA basin than was being returned *to* the AVAA basin from return flows from those extracted waters. This final argument by Phelan appears to suggest that, as long as the negative impacts of its pumping on the AVAA basin do not *substantially* harm the AVAA basin, there is no evidence supporting the Physical Solution's regulation of its pumping. However, Phelan cites no authority that a court lacks evidentiary support for a Physical Solution merely because any *one* party regulated thereunder can argue that exempting *its* pumping from its terms would only minimally diminish the effectiveness of the Physical Solution. (Contra, *City of Lodi v. East Bay Mun. Utility Dist.* (1936) 7 Cal.2d 316, 341 [trial court has power and duty to admit evidence relating to possible physical solutions and "to enforce such solution regardless of whether the parties agree"].) Indeed, we believe this

plaintiff's breach of contract claim. (*Kemp, supra*, 146 Cal.App.4th at pp. 1476–1481.) The appellate court, concluding the trial court erred by using collateral estoppel on the probable validity issue, also rejected invoking substantial evidence review to affirm the determination on the probable validity issue because it was clear the court never considered or weighed any evidence once it determined (erroneously) collateral estoppel obviated examination of that issue. (*Id.* at pp. 1477–1478.) Similarly, in *Affan, supra*, 189 Cal.App.4th 930, the trial court rejected an owner's claim of negligence against a homeowners association because it apparently misconstrued a fact-based "judicial deference" defense (available to associations under *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249) as a blanket immunity defense (*Affan, supra*, at pp. 938–940), and therefore never examined whether the requisite facts had been established to invoke that judicial deference defense. (*Id.* at pp. 940–944.) Unlike those cases, the statement of decision here does not show the approval of the Physical Solution was based on matters dehors the evidence (as in *Kemp*) or on erroneous legal standards (as in *Affan*), but was instead based on correct legal considerations and after considering the evidence. Accordingly, neither *Kemp* or *Affan* is relevant here.

argument (if credited) would eviscerate the ability of a court to adopt *any* basin-wide physical solution: if any single water rights holder could bar adoption of a proposed physical solution unless it was exempted from it by asserting its specific unconstrained pumping would have limited impact on the effectiveness of its remaining regulations, *any* proposed physical solution could be exposed to a “death by a thousand cuts” because each objecting water claimant could likewise claim exemption from its regulation under the “individual de minimus impacts” argument.

We conclude Phelan has not carried its appellate burden of showing there was inadequate evidence to support the conclusion the Physical Solution adequately met the twin goals of protecting the paramount rights of vested water rights holders while preventing the ultimate destruction of the AVAA aquifer (*Peabody, supra*, 2 Cal.2d at p. 383), and we therefore reject Phelan’s first argument on appeal.

II. The Trial Court Correctly Rejected Phelan’s Fourth Cause of Action Asserting It Had Acquired Water Rights as a “Public Use Appropriator”

Phelan’s cross-complaint, in addition to asserting it had acquired protectable water rights either as an appropriator (if surplus water existed) or by prescription (if there was not surplus water), also asserted it had “rights to pump water from the Basin to meet its municipal water demands ... as a matter of law and public policy” under California Water Code sections 106 and 106.5, which Phelan contended provided it with a “prior and paramount right to Basin water as against all non-municipal uses.” The trial court’s final statement of decision concluded Phelan had not acquired *any* right, whether appropriative or otherwise, to AVAA basin groundwater. On appeal, Phelan appears to assert the “public use” doctrine and policies embodied in Water Code sections 106 and 106.5 confer on Phelan a right—as a municipal appropriator for public use—to pump water from the AVAA for municipal purposes *regardless* of whether a surplus existed when it began pumping from Well 14.

California’s “dual system of water rights”¹⁹ essentially provides two sources by which water rights in *surface* waters can be acquired: by riparian rights holders who have first priority to the available water for riparian uses, or by appropriation of water for nonriparian uses when there is water in surplus beyond that used by first priority users. (See generally *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1183.)

“Similar principles govern rights to water in an underground basin. First priority goes to the landowner whose property overlies the groundwater. These ‘overlying rights’ are analogous to riparian rights in that they are based on ownership of adjoining land, and they confer priority. [Citation.] Surplus groundwater also may be taken by an appropriator, and priority among ‘appropriative rights’ holders generally follows the familiar principle that “‘the one first in time is the first in right.’” (*City of Barstow v. Mojave Water Agency, supra*, 23 Cal.4th] at p. 1241.) With groundwater there is an exception, however, that gives rise to a third category of rights. Under certain circumstances, an appropriator may gain ‘prescriptive rights’ by using groundwater to which it is not legally entitled in a manner that is “‘actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under claim of right.’” (*Ibid.*)” (*Santa Barbara Channelkeeper v. City of San Buenaventura, supra*, at p. 1184.)

Phelan does not assert its pumping from Well 14 is pursuant to the exercise of rights it holds either as an overlying landowner or by prescription. Accordingly, assuming the court correctly rejected Phelan’s claim there was surplus water upon which Phelan could have acquired protectable rights in the final recognized category of water rights (i.e., as an appropriator of surplus water), Phelan lacks any cognizable groundwater

¹⁹Although courts generally refer to the “dual system” of water rights, the courts have acknowledged that “California’s water rights system is not really dual but is instead tripartite, because some pueblo rights superior to riparian or appropriative rights exist.” (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 423, fn. 3.) Because the pueblo rights overlay is not implicated by Phelan’s appeal, we employ the “dual system” nomenclature and principles in evaluating its appeal.

rights in the AVAA.²⁰ Phelan’s “public use appropriator” argument instead posits there is *another* possible source for acquiring protectable rights to groundwater: that even *without* a surplus upon which Phelan could premise a claim as an appropriator, Water Code sections 106 and 106.5 and a variety of cases have created a public-policy-based alternative upon which Phelan could have acquired a protectible interest in the aquifer.

We conclude neither Water Code sections 106 and 106.5 nor the cases cobbled together by Phelan provides support for this novel theory that a pumper for municipal purposes can tap into an overdrafted aquifer and in doing so acquire protectable water rights in that aquifer. While the statutes cited by Phelan are declarative of general public policy,²¹ Phelan has cited no case (nor have we located any) in which those sections were employed to acquire a water right that would not otherwise have been acquired under the laws governing acquisition of water rights by overlying, appropriative, or prescriptive users. Instead, those sections appear to only be relevant to assigning and protecting priorities among *existing* water rights holders. (See, e.g., *Deetz v. Carter* (1965) 232 Cal.App.2d 851 [dispute among riparian rights holders resolved with domestic user given priority over irrigator].) Because those sections appear limited to assigning and protecting priorities, and the same legislative enactment which created those includes the express declaration that “[i]n the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights” (Wat. Code, § 103), we reject Phelan’s argument these sections create a special avenue by which municipal water suppliers can acquire a correlative appropriative right in an overdrafted aquifer.

²⁰In the unpublished portions of this opinion, we conclude the trial court did not err when it concluded there was no available surplus upon which Phelan could premise a claim as an appropriator.

²¹Water Code section 106 merely states that it is “the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.” Section 106.5 states only that it is “the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses.”

The cases cited by Phelan are equally inapposite to its argument. For example, while Phelan relies heavily on *Peabody, supra*, 2 Cal.2d 351 for its “appropriat[ion] for public use” argument, *Peabody*’s legal relevance is limited. There, the riparian owners sued a public agency for impairing their rights to river water after the agency had completed a dam and began impounding river water (for diversion to municipal uses), thereby reducing the water available to the downstream riparian owners. The trial court concluded the downstream owners were entitled to all of the waters from the stream and enjoined the agency from impounding waters behind the dam. (*Id.* at pp. 358–363.) The *Peabody* court merely concluded that, because the public use had commenced before the plaintiffs commenced their action to establish their water rights, the plaintiffs could not enjoin the agency from continuing to operate the dam, but were instead limited to other remedies, such as recovering any appropriate damages or to a physical solution minimizing or eliminating any damages otherwise recoverable. (*Id.* at pp. 377–380.) We conclude *Peabody* does not hold a public agency can *acquire* an appropriative water right merely by constructing and operating facilities diverting water for public use, but instead merely delimits the *remedies* which might be available when such activity by the public agency injures the rights held by paramount water rights holders.²²

The other cases relied on by Phelan are equally inapposite. (See, e.g., *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 535–538 [discussing availability of *injunctive* relief against public use appropriator]; *Hillside Water Co. v. City of Los Angeles* (1938) 10 Cal.2d 677, 688 [same]; *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 90 [“Intervention of a public use does not bar suit by the owner of a water

²²*Peabody* is also factually distinguishable. There, the agency had already completed a dam and began impounding river water before the riparian owners filed suit to establish their paramount water rights. (*Peabody, supra*, 2 Cal.2d at p. 377.) Here, while Phelan had acquired the parcel on which it constructed Well 14 before commencement of the AVGC litigation, the litigation commenced before it began operating its well. Thus, unlike *Peabody*, the public use here did not commence until *after* the action to establish water rights in the AVAA was underway.

right; it merely limits his remedy to damages in place of an injunction”].) Neither these cases, nor Phelan’s remaining authorities, provides any additional support for its claim that the municipal priority sections of the Water Code create an independent avenue for acquiring water rights in an overdrafted aquifer.²³

We conclude neither the cited Water Code sections nor the case law supports Phelan’s argument a public agency may acquire appropriative rights in water from an aquifer absent a surplus in that aquifer to which appropriative rights can attach.

III. The Phased Decisional Procedure Did Not Deprive Phelan of Due Process*

Phelan appears to argue it was deprived of its due process rights because of the order in which issues were resolved in the trial court’s phased proceedings. Phelan specifically asserts the court erred when it determined (during the Phase 3 trial) the AVAA basin was in overdraft while deferring the subsidiary determination of whether the water use by all water users in the AVAA basin (whether overlying owners, prescriptive rights holders, or prior appropriators) were for reasonable and beneficial uses. This alleged error, asserts Phelan, deprived it of its due process right to show there was surplus water upon which Phelan could premise its claim to an appropriative water right. Phelan also appears to argue the court erroneously placed on Phelan the burden to show there was unreasonable water uses by claimants with priority over Phelan that

²³For example, Phelan states that “[p]ublic use of percolating water is a nonoverlying use, whether the lands that receive such public service are overlying lands *or whether they are located outside of the ground-water area. Such public use is therefore an appropriative use of the water.*” (Quoting Hutchins, *The California Law of Water Rights* (1956) p. 458, italics and boldface supplied by Phelan.) While this accurately describes what *is* an “appropriative use,” it is an excerpt taken from Hutchins’s overall discussion on the “Appropriation of Surplus Percolating Waters,” which cautions that “[i]t is surplus or excess waters above the quantities to which the paramount rights of the overlying owners attach that are subject to appropriation for nonoverlying uses.” (*Id.* at p. 454.) Thus, Hutchins’s description of one *type* of appropriative use (public use outside the groundwater area) does not obviate the predicate *for* acquiring protectable appropriative user rights: the *existence* of surplus water above that water which is subject to paramount rights holders.

*See footnote, *ante*, page 1.

might have (if eliminated) provided surplus water available for appropriation by Phelan. Before we can evaluate Phelan's claims of procedural error, we must outline the substantive law the trial court was required to apply in the proceedings below.

A. General Principles: Overlying/Appropriative/Prescriptive Rights, the Significance of "Surplus" and the "Reasonable and Beneficial Use" Limitations on Water Use

As previously discussed, California's "dual system of water rights" in water courses contemplates two sources by which water rights can be acquired: by riparian rights (water rights held by virtue of owning land adjacent to or through which flowing water passes to use the water for such owned lands) or by appropriative rights (water rights held from diverting and using such water for the benefit of noncontiguous lands). (*Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1477–1478.) As between riparian rights holders and appropriative rights holders, the former group has paramount priority to the available water in times of shortages. (*Id.* at p. 1478.)

Analogous principles apply to water from aquifers: rights can be held by an overlying landowner (who has paramount priority to use the water to benefit the owned land analogous to a riparian owner) or by an appropriator if there is surplus water above the needs of paramount claimants. (See generally *Santa Barbara Channelkeeper v. City of San Buenaventura*, *supra*, 19 Cal.App.5th at pp. 1183–1184.) In the case of aquifers, however, there is an exception giving rise to a possible third category of rights: an appropriator may (under certain circumstances) gain "prescriptive rights" by using groundwater to which it was not legally entitled if the ordinary elements of prescription are satisfied. (*Ibid.*)

The key issue in deciding whether a party has acquired a protectable *appropriative* right is the existence of a "surplus," i.e., whether there was water beyond the amounts needed by paramount rights holders. (*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th at pp. 1240–1242 [“Any water not needed for the reasonable beneficial use of

those having prior rights is excess or surplus water and may rightly be appropriated on privately owned land for non-overlying use, such as devotion to public use or exportation beyond the basin or watershed”].) The converse concept is overdraft: when the withdrawals from the aquifer exceed the available recharge, there is no surplus but there is instead overdraft. (*City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d at pp. 277–278, disapproved on other grounds in *City of Barstow*, *supra*, at p. 1248 [“Overdraft commences whenever extractions increase, or the withdrawable maximum decreases, or both, to the point where the surplus ends. Thus, on the commencement of overdraft there is no surplus available for the acquisition or enlargement of appropriative rights. Instead, appropriations of water in excess of surplus then invade senior basin rights”].)

An overlay to this dual system for defining water rights is a key limiting principle: the rule of reasonableness. (*Santa Barbara Channelkeeper v. City of San Buenaventura*, *supra*, 19 Cal.App.5th at p. 1184.) There is an “overriding constitutional limitation that the water be used as reasonably required for the beneficial use to be served.” (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 105.) The rule of reasonableness means that paramount rights holders, while entitled to priority for water devoted to their reasonable and beneficial uses, may not be so profligate with their uses of available water that they deprive others of water that would otherwise be “surplus” and hence available for appropriation. As articulated by *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908:

“[I]t is now clear that an overlying owner or any other person having a legal right to surface or ground water may take only such amount as he reasonably needs for beneficial purposes. [Citations.] Public interest requires that there be the greatest number of beneficial uses which the supply can yield, and water may be appropriated for beneficial uses subject to the rights of those who have a lawful priority. [Citation.] *Any water not needed for the reasonable beneficial uses of those having prior rights is excess or surplus water ...*, [which] water may rightfully be appropriated

on privately owned land for nonoverlying uses, such as devotion to a public use or exportation beyond the basin or watershed.” (*Id.* at pp. 925–926, italics added.)

B. Analysis

Phelan’s due process claim on appeal, while imprecise, appears to have two embedded claims of prejudicial error. First, Phelan argues it was error to determine during the Phase 3 proceedings that the AVAA basin was in overdraft based on a comparison of current extractions against the average safe yield, while bifurcating and deferring to later stages whether the current extractions by all other water users in the AVAA basin qualified as reasonable and beneficial uses for such extracted water. Second, Phelan appears to argue the trial court’s delimitation of the issues determined in Phase 3 somehow foreclosed Phelan from proving its claim that there was (or could have been) a surplus which Phelan could pump as an appropriator, and erroneously placed on Phelan the burden of showing there was a surplus available for appropriation by Phelan.

A trial court has discretion to determine the order in which claims or issues are bifurcated and determined, and the selection and scheduling of those phased determinations will not be disturbed absent an abuse of that discretion. (See generally *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 353; *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 163.) The issue bifurcated and resolved in Phase 3 was a core issue common to all of the various actions—whether the AVAA basin was currently in a state of overdraft based on current extractions in light of the safe yield of the aquifer such that judicial intervention was required to provide for managing the aquifer and protecting it against further degradation. We cannot conclude that selecting this core issue for resolution at this earlier stage—whether the AVAA basin was in overdraft—was an abuse of discretion.

Indeed, Phelan does not contend on appeal that *selecting* “overdraft” as the issue to be examined in Phase 3 was an abuse of discretion. Instead, Phelan appears to assert the court should have employed a different *metric* for the Phase 3 “overdraft”

determination. Rather than comparing safe yield to current *actual* extractions from the AVAA basin, Phelan argues the court should instead *also* have made the separate determination as part of the Phase 3 trial on whether these actual extractions *exceeded* withdrawals devoted to reasonable and beneficial uses. Phelan contends on appeal that only after the court decided whether “all pumpers [from the AVAA] were pumping for reasonable and beneficial uses” could it then decide whether such pumped amounts were above the safe yield (overdraft) or below the safe yield (surplus). Phelan therefore argues it was an abuse of discretion to defer examining the separate issue of whether current actual extractions exceeded the amounts reasonably and beneficially used by the paramount rights holders.

However, there is no indication Phelan timely objected to the issues as delimited for the Phase 3 trial.²⁴ Prior to the Phase 3 trial, the court (in connection with its order consolidating all pending actions concerning water claims to the AVAA basin,) ordered a case management conference to hear argument concerning the sequencing of common issues to be heard at the next phase, and proposed the issues for the Phase 3 trial would be limited to “safe yield” and “overdraft” while numerous other issues (including “reasonable and beneficial use of water”) would be deferred for later determination. Phelan apparently concurred with the proposal that Phase 3 be focused on “a determination of Basin characteristics including its safe yield and overdraft (past or present),” and there is no suggestion Phelan objected to deferring numerous other questions—including questions about reasonable and beneficial use—to subsequent

²⁴Although Phelan’s reply brief on appeal asserts it did lodge an objection, Phelan’s citations to the record rely solely on its objections to the proposed statement of decision following trial of Phelan’s second and sixth causes of action, which resolved Phelan’s claims for appropriative and return flow rights long after Phase 3 had been concluded. Phelan interposed no timely objection, prior to the Phase 3 trial, that the issues of safe yield and overdraft necessarily required a concurrent determination *during that phase* of whether the water being extracted was being devoted to reasonable and beneficial uses.

phases.²⁵ Indeed, rather than objecting or contending there might be evidence showing the AVAA was *not* in overdraft, Phelan’s trial brief for Phase 3 seemed affirmatively to assert the subbasin most relevant to Phelan (i.e., the Butte subbasin in the southeast portion of the AVAA where Well 14 was operating) was “in overdraft or trending toward overdraft.”²⁶ Finally, the record is devoid of any suggestion Phelan sought to proffer evidence, during this (or any other) phase, that actual extractions exceeded reasonable and beneficial uses.²⁷ Because there is no indication Phelan timely objected to the issues as delimited for the Phase 3 trial, it may not argue for the first time on appeal that the discretionary determination on the scope of issues to be resolved in Phase 3 was an abuse of the trial court’s discretion. (See generally *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885–886; *Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 382.)

²⁵The court, after several case management hearings, eventually ordered the Phase 3 trial would examine whether the basin was in overdraft and specified it “does [not] expect to hear evidence of individual pumping of water by any party within the basin; rather, it expects to hear evidence concerning total pumping and total recharge from all sources.” That same order advised that “[a]ny party requiring further clarification of the issues in this third phase of trial is invited to request such clarification.” Phelan cites nothing suggesting it objected, sought clarification, or otherwise sought to inject the “reasonable and beneficial use” issue into Phase 3.

²⁶Phelan’s Phase 3 trial brief stated it would “offer evidence that pumping from [Phelan’s] six wells located within the Groundwater Basin intercepts groundwater that would otherwise flow to the northwest and into a portion of the Adjudication Area where irrigation pumping by others is occurring. The evidence indicates, among other things, that the combination of [Phelan’s] pumping and downgradient pumping by others has resulted in declining groundwater levels in the Southeast portion of the Adjudication Area, particularly over the past ten years. Groundwater level trends indicate that overdraft exists in the Southeast area of the Adjudication Area, or will exist in the near future, if groundwater pumping in this area continues at current rates or increases.”

²⁷Although Phelan did submit a case management statement seeking to clarify whether the issues to be decided in Phase 3 would necessitate testimony from their expert (Harder), none of the subjects on which Harder was proffered purported to address reasonable and beneficial uses of water by other AVAA users.

Phelan also appears to complain it was prejudiced because the Phase 4 trial order originally contemplated, but ultimately omitted, consideration of the “reasonable and beneficial use” question.²⁸ While Phelan correctly recites the evolution of the Phase 4 “trial issues” order, Phelan cites nothing to indicate it objected to this delimitation of the Phase 4 issues, even though it participated in the lengthy hearing at which the proposed modification was considered and ultimately approved. Accordingly, we must deem any claim of error to be waived. (*In re Kevin S.*, *supra*, 41 Cal.App.4th at pp. 885–886.)

Moreover, even assuming Phelan could assert it was error to exclude “reasonable and beneficial uses” from the Phase 4 trial, Phelan has not demonstrated such error would constitute reversible error. While the Phase 4 trial ultimately *was* limited to quantifying the amounts pumped during the relevant period by the numerous parties (other than the Small Pumper Class and Granite Construction) who claimed pumping rights in the AVAA aquifer, Phelan does not articulate on appeal how deferring the “reasonableness of use” question foreclosed Phelan from *subsequently* demonstrating the existence of waste (as alleged in its seventh cause of action) or the existence of a basin-wide surplus necessary to its second cause of action. Phelan does complain on appeal that its seventh cause of action for “waste, unreasonable use or an unreasonable method of diversion or use” was “never heard,” but Phelan does not explain how the delineation of issues in Phases 3 or 4 precluded Phelan from litigating its seventh cause of action. To the

²⁸The Phase 4 trial order originally described its scope to include determining the “reasonable and beneficial use of water for each parcel to be adjudicated.” However, a subsequent proposal was submitted by counsel for the Wood class, and joined by other parties, to winnow the issues to be tried in Phase 4 and limit it to identifying the actual amounts extracted by each claimant (for the relevant years) along with the actual use to which the water was put, while excluding from Phase 4 any litigation over whether such actual use was reasonable as to either the type or manner of use. After extensive discussion among the parties, the Phase 4 order was amended to clarify that the trial would be limited to “the amount of water used by each party and the identification of the beneficial use to which that amount was applied, but will not include any determination as to the reasonableness of that type of use, of the manner in which the party applied water to that use, or any determination of a water right.”

contrary, the record shows (after the Phase 3 and 4 proceedings had been concluded) the court held a lengthy hearing to determine which of Phelan's claims should next be scheduled for trial, and ultimately set the Stage One trial to encompass litigation of Phelan's claimed "right to pump water as an appropriator of right, Number one; and Number two, [to] brief and present evidence ... concerning [Phelan's] right ... as a public producer apart from whether there was a surplus." (Some capitalization omitted.) Phelan was provided adequate opportunity to litigate whether there was available surplus in the AVAA aquifer to support its claim as an appropriator, which could have included the subsidiary issue it now asserts it was foreclosed from litigating: whether elimination of unreasonable or nonbeneficial water uses would have produced a surplus (from the native safe yield) that Phelan could have claimed as an "appropriator." However, Phelan did not introduce any evidence the actual amounts pumped by other users exceeded the amounts reasonably appropriate for the beneficial purposes of those users, much less that such wasteful uses were (in the aggregate) so enormous that eliminating such waste would have reduced reasonable and beneficial uses to below the native safe yield and created a surplus available for appropriation by Phelan. We conclude Phelan was not deprived of the due process opportunity to show unreasonable or nonbeneficial uses.²⁹

²⁹It also appears Phelan could have resurrected and litigated its seventh cause of action on two other occasions. First, after the court ruled on Phelan's causes of action alleging it held water rights as an appropriator of a surplus or as a municipal-uses appropriator, the court held the August 2015 Stage 2 trial for Phelan to present evidence on its "remaining causes of action." Phelan's trial brief for that Stage 2 trial addressed only its third cause of action (for a physical solution), its claim it should have municipal appropriator status, and its eighth cause of action seeking declaratory relief as to the "Antelope Valley Groundwater Basin." Additionally, its evidentiary presentation at that hearing proffered no evidence of "waste." Phelan's trial brief for the August 2015 Stage 2 trial *did* "reserve[] the right to present evidence on its Seventh Cause of Action," which it suggested would be presented during the "prove up hearings" on the Physical Solution scheduled for later that year. While these "prove-up" hearings in Phase 6 provided yet another opportunity for Phelan to introduce evidence supporting its claim of unreasonable use of water, Phelan ultimately disclaimed any effort to present affirmative evidence at the final phase examining the proposed Physical Solution.

The final aspect of Phelan's claim it was denied due process appears to assert the court misallocated the burden of proof by placing the burden on Phelan to show a surplus existed in the AVAA basin. Phelan sub silencio argues that, under *Peabody, supra*, 2 Cal.2d 351, the burden should instead have been on all parties to show the amounts actually pumped by each of the competing priority pumpers was devoted *solely* to reasonable and beneficial uses, and that the absence of such evidence left the issue of surplus unresolved.³⁰ Cross-defendants contend the trial court correctly ruled that Phelan, as the party asserting there was a surplus available for appropriation (necessary to its second cause of action) or there was "waste" (as asserted in Phelan's seventh cause of action), had the burden to show the amounts actually pumped exceeded the amounts devoted to reasonable and beneficial uses by the paramount rights holders.

We conclude the trial court correctly held Phelan had the burden of proof to show surplus and, to the extent Phelan contended that eliminating wasteful uses would reveal a surplus existed that would be available for appropriative uses by Phelan, to show the fact and extent of such alleged unreasonable or nonbeneficial use. Several cases support

³⁰Phelan also claims the statement of decision from the Stage One trial, which rejected Phelan's "surplus" claim, was "flawed" because it "does not explain" why (under *Peabody*) the burden of proof was not placed on all parties to first establish their actual water use was also "reasonable and beneficial." Phelan did assert the statement of decision required such explanation, but the court's final statement of decision from Stage One addressing Phelan's claim for surplus *did* explain why it concluded Phelan had the burden of proof as to surplus. Moreover, we reject Phelan's claim that the issue of "reasonable and beneficial use" was never resolved below. While the Stage One statement of decision stated the court had not yet made (but would ultimately make) a determination whether other paramount rights holders devoted the water to reasonable and beneficial uses, it ultimately did resolve that question. The trial on the proposed Physical Solution contemplated that it would encompass evidence that the actual uses by the various pumpers were reasonable and beneficial uses, and evidence on this issue *was* introduced by proponents of the Physical Solution. Finally, the issue was addressed and resolved in the final statement of decision following Phase 6, when the court stated that "[b]ased 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."

placing the burden of proof on Phelan, as the party asserting an appropriative right, to prove a surplus existed upon which it could predicate its claimed appropriative right. (*Allen v. California Water & Tel. Co.*, *supra*, 29 Cal.2d at p. 481 [“It is true that the burden of proving the existence of a surplus is on” the party asserting the appropriative right against overlying owners]; cf. *City of Lodi v. East Bay Mun. Utility Dist.*, *supra*, 7 Cal.2d at p. 339 [in dispute between later appropriator against prior appropriator, burden on former to prove surplus]; *Monolith Portland Cement Co. v. Mojave Public Utilities Dist.* (1957) 154 Cal.App.2d 487, 494 [dicta].) This allocation of the burden of proof is consonant with the general rule that a plaintiff has the burden of production and persuasion to support the allegations of its claims for relief. (See generally *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.)

Phelan’s reliance on *Peabody* does not alter our conclusion the trial court correctly assigned to Phelan the burden of showing surplus and, as a predicate to establishing such a surplus existed, that there was waste. In *Peabody*, the trial court had entered a judgment in favor of the riparian owners and against the later appropriator on the theory that riparian owners were entitled to “all of the waters of the stream as the same were wont to flow in the course of nature, including the flood and freshet flows thereof, regardless of any waste or surplus that might result from the exercise of such a right and regardless of any rule of reasonable use.” (*Peabody*, *supra*, 2 Cal.2d at p. 363.) The trial court in *Peabody* had not considered the impact of the then-recent amendment of the California Constitution, which added section 3 to article XIV, declaring “[t]he right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.” (*Peabody*, at p. 366.) The *Peabody* court reversed and remanded the judgment for reconsideration in light of those limitations, noting the issue is whether “after

excluding all of the reasonable beneficial uses present and prospective (considering in connection therewith reasonable methods of use and reasonable methods of diversion) to which the waters of the stream are put, either under the riparian right or by prior appropriation, is there then water wasted or unused or not put to any beneficial use? If so, the supply or product of the stream may be said to be ample for all, a surplus or excess exists, ... and the appropriator may take the surplus or excess without compensation.” (*Id.* at pp. 368–369.) However, *Peabody* specifically considered whether the burden of proof should be on the riparian owner to show its riparian rights were injured by the appropriator’s diversion, or should instead be on the appropriator to show ““that there is a surplus ... upon the ground that such [appropriated] waters were waste or lost waters”” as had been held in *Miller v. Bay Cities Water Co.* (1910) 157 Cal. 256, 272. (*Peabody, supra*, at p. 381.) *Peabody* concluded “[t]he general rule in this state as to the burden of proof is laid down in [former] section 1981 of the Code of Civil Procedure as follows: ‘The party holding the affirmative of the issue must produce the evidence to prove it; therefore, the burden of proof lies on the party who would be defeated if no evidence was given on either side.’ However, when one enters a field of water supply and seeks by appropriation to take water from such supply on the claim that there is more than sufficient for all reasonable beneficial uses by those who have the prior and preferential right, it would seem to comport with the principles of fairness and justice that the appropriator, in whatever way the issue may arise, should have the burden of proving that such excess exists. We therefore reaffirm the rule to that effect in the *Miller* case.” (*Ibid.*)

Thus, while *Peabody* and its progeny make clear that determining surplus can include consideration of whether the actual amounts used by paramount water rights holders are being applied to reasonable and beneficial uses, *Peabody* also casts upon the person claiming appropriative rights the burden of showing there is available surplus after accounting for reasonably and beneficially applied water by paramount rights holders.

When a showing of available surplus necessarily encompasses showing actual uses by paramount rights holders are unreasonable (as to either the type or manner of use), as well as quantifying such unreasonable uses in an amount necessary to provide for the surplus claimed by the appropriator, we conclude the burden of proof is upon the appropriator under *Peabody*.

We conclude Phelan was provided adequate opportunity to proffer evidence in support of its claim to water rights in the AVAA basin, that the trial court correctly placed on Phelan the burden of proving its claims, and that the phased proceedings did not impair Phelan's opportunity to present its case. We therefore reject Phelan's claim it was denied due process.

IV. The Trial Court Correctly Concluded Phelan Had No Priority Claim to Return Flows from Native Safe Yield*

Phelan finally asserts that, to the extent native water was extracted from the AVAA basin by Well 14 and then used by Phelan's customers on land overlying the AVGB, Phelan was entitled to any return flows from such water, and therefore it was error to require Phelan to pay a replenishment assessment without accounting for such return flows. Phelan, relying on *Montana v. Wyoming* (2011) 563 U.S. 368 and various other foreign authorities discussing water law concepts of recapture of waste and seepage water, asserts the trial court erred in limiting claims for return flows to importers of nonnative waters. Cross-defendants argue the trial court below correctly held state law is dispositive and, under cases such as *City of Los Angeles v. City of San Fernando, supra*, 14 Cal.3d 199 (*San Fernando*), the interests recognized in return flows by California courts is limited to return flows from water *imported* by the claimant. Cross-defendants

*See footnote, *ante*, page 1.

argue that, because Well 14 only draws native water from the AVAA aquifer, the trial court correctly rejected Phelan's claim to return flows for water drawn from Well 14.³¹

California courts, when addressing the allocation of a limited supply of groundwater among competing claimants, have distinguished at least three sources of such water: (1) native groundwater (rainfall, infiltration from lakes and streams, and other natural inflows that percolate into the aquifer), (2) imported water and the return flows it generates (imported water that is used on the surface which then percolates into the aquifer), and (3) salvaged water (water that would have wasted to the sea during the rainy season but for the dams and reservoirs capturing and saving it from loss to the sea) and the return flows generated by its capture and use. (See generally *City of Santa Maria v. Adam, supra*, 211 Cal.App.4th at p. 280.) The courts have concluded that, when a party imports water into a basin that would otherwise not be available to that basin (i.e., not attributable to native sources of recharge), that party (after applying the water in the first instance) *also* has "the prior right to quantities of groundwater attributable to return flows of imported water." (*Id.* at p. 301.) This is a rule of priorities and "means that one who brings water into a watershed may retain a prior right to it even after it is used. [Citation.] The practical reason for the rule is that the importer should be credited with

³¹Although we will conclude the trial court correctly rejected Phelan's claims to return flows from *native* water, nothing in this opinion should be construed to foreclose Phelan from seeking relief under the terms of the judgment to the extent Phelan has become a *de facto importer* of water. Under paragraph 6.4.1.2 of the Physical Solution, Phelan must pay a "Replacement Water Assessment pursuant to Paragraph 9.2" for water it pumps from Well 14. This Replacement Water Assessment is apparently designed to cover the watermaster's costs for "replacement waters" and specifies it "shall be used [by the watermaster] to *acquire Imported Water.*" (Physical Solution, ¶ 9.2, italics added.) Phelan was not party to the provisions of the Physical Solution (which delimited which persons or entities would be entitled to claim the benefits of "return flows") nor was it party to any other agreement which might exclude water purchased by the watermaster with replacement assessments from qualifying as "imported water." We express no views on whether Phelan has become, albeit involuntarily, a participant in a consortium of parties paying the watermaster to import water into the AVAA or whether such status entitles Phelan to claim return flow interests under the rationale of *San Fernando*.

the ‘fruits ... of his endeavors in bringing into the basin water that would not otherwise be there.’” (*Ibid.*)

This “fruits-of-his-endeavors” rationale has an important corollary: priority is *not* given to return flows from *native* waters. In *San Fernando*, our Supreme Court rejected such a claim, explaining:

“Defendants contend that if any party is given rights to a return flow derived from delivered *imported* water, it is ‘obvious’ and ‘axiomatic’ that the same rights should be given to the return flow from delivered water derived from all other sources, including native water extracted from local wells. This argument misconceives the reason for the prior right to return flow from imports. *Even though all deliveries produce a return flow, only deliveries derived from imported water add to the ground supply.* The purpose of giving the right to recapture returns from delivered imported water priority over overlying rights and rights based on appropriations of the native ground supply is to credit the importer with the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there. *Returns from deliveries of extracted native water do not add to the ground supply but only lessen the diminution occasioned by the extractions.*” (*San Fernando, supra*, 14 Cal.3d at p. 261, 2d & 3d italics added.)

We agree with cross-defendants the trial court correctly ruled California does not grant an appropriator of native water any priority interest in return flows. In addition, the authorities relied on by Phelan do not convince us that *San Fernando* has been overruled sub silencio. For example, in *Montana v. Wyoming, supra*, 563 U.S. 368, the United States Supreme Court examined a narrow question: whether an interstate compact barred an upstream appropriator of native water supplies from using more efficient irrigation techniques because such efficiencies reduced the amounts returning to the watercourse for use by downstream appropriators. The *Montana* court merely concluded the interstate compact incorporated (and was not intended to alter) background appropriative water rights concepts, including the right of an appropriator to recapture and reuse his own waste and seepage before it escapes his possession and control, and that improving irrigation efficiencies was merely a form of recapture permitted under existing water law.

(*Id.* at pp. 378–388.) The *Montana* court did not purport to examine whether an appropriator is entitled to priority over return flows from native waters that have returned to the aquifer and is therefore inapposite.³²

The California statutes cited by Phelan do not alter our conclusion. For example, while Water Code section 71610 does permit a water district to “recycle, recapture, and salvage any water ... for the beneficial use or uses of the district” (*id.* at subd. (a)), that section only describes powers of a water district and has never been applied to expand rights held by a water district. Indeed, because that statute was in effect at the time the court issued its decision in *San Fernando* (see Stats. 1963, ch. 156, § 1, p. 823), but the court nevertheless held extractions of native waters are not accompanied by return flow rights in such water, we decline to apply that section to undermine the *San Fernando* holding.

CONCLUSION

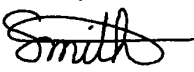
We conclude substantial evidence supports the judgment as to Phelan and Phelan was not deprived of its due process rights to present its claims. We also conclude the court correctly rejected Phelan’s claim its status as a municipal purposes appropriator

³²The other cases cited by Phelan are equally unpersuasive. For example, in *Department of Ecology v. United States Bureau of Reclamation* (1992) 118 Wash.2d 761, the issue resolved by the court was a narrow question: whether a state agency could grant a permit to a landowner to appropriate water from a stream where such water was still subject to the appropriative rights held by the federal government. The stream water in dispute was generated because a federal reclamation project drew water from the Columbia River and distributed that water to users within the project boundaries for irrigation and other purposes, but some portion of the water (after its initial use) then fed a stream that was still within the boundaries of that project. (*Id.* at pp. 763–765.) The *Department of Ecology* court merely concluded the water in the stream was still subject to the federal government’s appropriation rights (which specifically reserved the right to recapture and reuse waste and seepage waters generated by the reclamation project), and because it remained appropriated water owned by the federal appropriator within the project boundaries, it was not public water and could not be reappropriated by the landowner. (*Id.* at pp. 767–769.) It appears that the water considered by the *Department of Ecology* court was more analogous to water “imported” into the reclamation project’s boundaries by the reclamation project, and thus according superior rights to the federal importer is consonant with the rights accorded to importers of water under California law.

created an appropriative water right that was improperly constrained by the judgment, and did not err in rejecting Phelan's claim to return flows from native water pumped by Phelan from the AVAA basin. Accordingly, we affirm the judgment as to Phelan. Each party is responsible for its costs on appeal.


PEÑA, Acting P.J.

WE CONCUR:


SMITH, J.


SNAUFFER, J.

Exhibit 2

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

ANTELOPE VALLEY GROUNDWATER
CASES

Included Actions:

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

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

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

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

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

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

~~(PROPOSED)~~ JUDGMENT

PROPOSED JUDGMENT

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

- 8 1. The Second Amended Stipulation For Entry of Judgment and Physical Solution
9 among the stated stipulating parties is accepted and approved by the Court.
- 10 2. Consistent with the December 23 2015 Statement of Decision ("Decision"), the
11 Court adopts the Proposed Judgment and Physical Solution attached hereto as
12 Exhibit A and incorporated herein by reference, as the Court's own physical
13 solution ("Physical Solution"). The Physical Solution is binding upon all parties.
- 14 3. In addition to the terms and provisions of the Physical Solution the Court finds as
15 follows:
 - 16 a. Each of the Stipulating Parties to the Physical Solution has the right to
17 pump groundwater from the Antelope Valley Adjudication Area as stated
18 in the Decision and Physical Solution.
 - 19 b. The following entities are awarded prescriptive rights from the native safe
20 yield against the Tapia Parties, defaulted parties identified in Exhibit 1 to
21 the Physical Solution, and parties who did not appear at trial identified in
22 Exhibit B attached hereto, in the following amounts:

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

1 Desert Lake Community Services District 318 AFY

2 California Water Service Company 655 AFY

3 North Edwards Water District 111.67 AFY

4 No other parties are subject to these prescriptive rights.

5 c. Each of the parties referred to in the Decision as Supporting Landowner

6 Parties has the right to pump groundwater from the Antelope Valley

7 Adjudication Area as stated in the Decision and in Paragraph 5.1.10 of the

8 Physical Solution in the following amounts:

9 i. Desert Breeze MHP, LLC 18.1 AFY

10 ii. Milana VII, LLC dba Rosamond Mobile Home Park 21.7 AFY

11 iii. Reesdale Mutual Water Company 23 AFY

12 iv. Juanita Eyherabide, Eyherabide Land Co., LLC

13 and Eyherabide Sheep Company, collectively 12 AFY

14 v. Clan Keith Real Estate Investments, LLC.,

15 dba Leisure Lake Mobile Estates 64 AFY

16 vi. White Fence Farms Mutual Water Co. No. 3 4 AFY

17 vii. LV Ritter Ranch LLC 0 AFY

18 d. *viii. Robar Enterprises, Inc., Hi-Grade Materials Co., and CJR, a*
Each member of the Small Pumper Class can exercise an overlying right

19 pursuant to the Physical Solution. The Judgment Approving Small Pumper

20 Class Action Settlements is attached as Exhibit C ("Small Pumper Class

21 Judgment") and is incorporated herein by reference.

22 e. Cross-defendant Charles Tapia, as an individual and as Trustee of Nellie

23 Tapia Family Trust (collectively, "The Tapia Parties") has no right to pump

24 groundwater from the Antelope Valley Adjudication Area except under the

25 terms of the Physical Solution.

26 f. Phelan Piñon Hills Community Services District ("Phelan") has no right to

27 pump groundwater from the Antelope Valley Adjudication Area except

28 under the terms of the Physical Solution.

General Partnership - 200 AFY

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- 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.

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

The Clerk shall enter this Judgment.

Dated: Dec 23, 2015

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding Special Title
(Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding No.
4408

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

Judge: The Honorable Jack Komar, Dept. 17

**[PROPOSED] JUDGMENT AND PHYSICAL
SOLUTION**

[PROPOSED] JUDGMENT

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INDEX OF EXHIBITS AND APPENDICES

Exhibits:

- Exhibit 1: Listing of Parties Against Which a Default Judgment Has Been Entered.
- Exhibit 2: Map of Area Adjudicated in This Action.
- Exhibit 3: Non-Overlying Production Rights.
- Exhibit 4: Overlying Production Rights
- Exhibit 5: Phase 3 Trial Decision.
- Exhibit 6: Map of boundaries of Edwards Air Force Base.
- Exhibit 7: Map of boundaries of Air Force Plant 42.
- Exhibit 8: Rights to Produce Imported Water Return Flows.
- Exhibit 9: Map of the Watershed of the Basin.
- Exhibit 10: Map of Subareas.

Appendices:

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

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

10 **I. DESCRIPTION OF LITIGATION**

11 **1. PROCEDURAL HISTORY**

12 **1.1 Initiation of Litigation.**

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

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

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

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

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

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

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

13 **1.2 General Adjudication Commenced.**

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

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

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

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

12 **1.3 Other Actions**

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

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

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

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

28

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

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

9 **1.4 McCarran Amendment Issues**

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

18 **1.5 Phased Trials**

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

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

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

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

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

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

12 **1.6 Defaults**

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

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

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

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1 **II. DECREE**

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

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

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

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

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

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

17 **3.5 Definitions.** As used in this Judgment, the following terms shall have the
18 meanings set forth herein:

19 **3.5.1 Action.** The coordinated and consolidated actions included in the
20 Antelope Valley Groundwater Cases, Judicial Council Coordination Proceeding No. 4408, Santa
21 Clara Superior Court Case No. 1-05-CV-049053.

22 **3.5.2 Adjusted Native Safe Yield.** The Native Safe Yield minus (1) the
23 Production Right allocated to the Small Pumper Class under Paragraph 5.1.3, (2) the Federal
24 Reserved Water Right under Paragraph 5.1.4, and (3) the State of California Production Right
25 under Paragraph 5.1.5. The Adjusted Native Safe Yield as of the date of entry of this Judgment is
26 70,686.6 acre-feet per year.

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1 **3.5.3 Administrative Assessment.** The amount charged by the
2 Watermaster for the costs incurred by the Watermaster to administer this Judgment.

3 **3.5.4 Annual Period.** The calendar Year.

4 **3.5.5 Antelope Valley United Mutuals Group.** The members of the
5 Antelope Valley United Mutuals Group are Antelope Park Mutual Water Company, Aqua-J
6 Mutual Water Company, Averydale Mutual Water Company, Baxter Mutual Water Company,
7 Bleich Flat Mutual Water Company, Colorado Mutual Water Co., El Dorado Mutual Water
8 Company, Evergreen Mutual Water Company, Land Projects Mutual Water Co., Landale Mutual
9 Water Co., Shadow Acres Mutual Water Company, Sundale Mutual Water Company, Sunnyside
10 Farms Mutual Water Company, Inc., Tierra Bonita Mutual Water Company, West Side Park
11 Mutual Water Co. and White Fence Farms Mutual Water Co., together with the successor(s)-in-
12 interest to any member thereof. Each of the members of the Antelope Valley United Mutuals
13 Group was formed when the owner(s) of the lands that were being developed incorporated the
14 mutual water company and transferred their water rights to the mutual water company in
15 exchange for shares of common stock. The mutual water company owns, operates and maintains
16 the infrastructure for the production, storage, distribution and delivery of water solely to its
17 shareholders. The shareholders of each of these mutual water companies, who are the owners of
18 the real property that is situated within the mutual water company's service area, have the right to
19 have water delivered to their properties, a right appurtenant to their land. [*See, Erwin v. Gage*
20 *Canal Company* (1964) 226 Cal.App.2d 189].

21 **3.5.6 AVEK.** The Antelope Valley–East Kern Water Agency.

22 **3.5.7 Balance Assessment.** The amount of money charged by the
23 Watermaster on all Production Rights, excluding the United States' actual Production, to pay for
24 the costs, not including infrastructure, to purchase, deliver, produce in lieu, or arrange for
25 alternative pumping sources in the Basin.

26 **3.5.8 Basin.** The area adjudicated in this Action as shown on Exhibit 2,
27 attached hereto and incorporated herein by reference, which lies within the boundaries of the line
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1 labeled "Boundaries of the Adjudicated Area" and described therein. The Basin generally
2 encompasses the Antelope Valley bordered on the West and South by the San Gabriel and
3 Tehachapi Mountains, with the eastern boundary being the Los Angeles-San Bernardino County
4 line, as determined by the Court.

5 **3.5.9 Carry Over.** The right to Produce an unproduced portion of an
6 annual Production Right or a Right to Imported Water Return Flows in a Year subsequent to the
7 Year in which the Production Right or Right to Imported Water Return Flows was originally
8 available.

9 **3.5.10 Conjunctive Use.** A method of operation of a groundwater basin
10 under which Imported Water is used or stored in the Basin in Years when it is available; allowing
11 the Basin to refill, and more Groundwater is Produced in Years when Imported Water is less
12 available.

13 **3.5.11 Defaulting Party.** A Party who failed to file a responsive pleading
14 and against which a default judgment has been entered. A list of Defaulting Parties is attached as
15 Exhibit 1.

16 **3.5.12 Drought Program.** The water management program in effect only
17 during the Rampdown period affecting the operations and Replacement Water Assessments of the
18 participating Public Water Suppliers.

19 **3.5.13 Judgment.** A judgment, consistent with Cal.C.C.P. §§ 577 and
20 1908(a)(1) and 43 U.S.C. § 666, determining all rights to Groundwater in the Basin, establishing
21 a Physical Solution, and resolving all claims in the Action.

22 **3.5.14 Groundwater.** Water beneath the surface of the ground and within
23 the zone of saturation, excluding water flowing through known and definite channels.

24 **3.5.15 Imported Water.** Water brought into the Basin from outside the
25 watershed of the Basin as shown in Exhibit 9.

26 **3.5.16 Imported Water Return Flows.** Imported Water that net
27 augments the Basin Groundwater supply after use.

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1 **3.5.17 In Lieu Production.** The amount of Imported Water used by a
2 Producer in a Year instead of Producing an equal amount of that Producer's Production Right.

3 **3.5.18 Material Injury.** Material Injury means impacts to the Basin caused
4 by pumping or storage of Groundwater that:

5 **3.5.18.1** Causes material physical harm to the Basin, any
6 Subarea, or any Producer, Party or Production Right, including, but not limited to, Overdraft,
7 degradation of water quality by introduction of contaminants to the aquifer by a Party and/or
8 transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and
9 other material physical injury caused by elevated or lowered Groundwater levels. Material physical
10 harm does not include "economic injury" that results from other than direct physical causes, including
11 any adverse effect on water rates, lease rates, or demand for water.

12 **3.5.18.2** If fully mitigated, Material Injury shall no longer be
13 considered to be occurring.

14 **3.5.19 Native Safe Yield.** Naturally occurring Groundwater recharge to
15 the Basin, including "return flows" from pumping naturally occurring recharge, on an average
16 annual basis. Imported Water Return Flows are not included in Native Safe Yield.

17 **3.5.20 New Production.** Any Production of Groundwater from the Basin
18 not of right under this Judgment, as of the date of this Judgment.

19 **3.5.21 Non-Overlying Production Rights.** The rights held by the Parties
20 identified in Exhibit 3, attached hereto and incorporated herein by reference.

21 **3.5.22 Non-Pumper Class.** All private (i.e., non-governmental) Persons
22 and entities that own real property within the Basin, as adjudicated, that are not presently
23 pumping water on their property and did not do so at any time during the five Years preceding
24 January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase,
25 gift, inheritance, or otherwise of such Non-Pumper Class members' land within the Basin. The
26 Non-Pumper Class excludes (1) all Persons to the extent their properties are connected to a
27 municipal water system, public utility, or mutual water company from which they receive water
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1 service, (2) all properties that are listed as “improved” by the Los Angeles County or Kern
2 County Assessor's offices, unless the owners of such properties declare under penalty of perjury
3 that they do not pump and have never pumped water on those properties, and (3) those who opted
4 out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have
5 been individually named under the Public Water Suppliers' cross-complaint, unless such a
6 landowner has opted into such class.

7 **3.5.23 Non-Pumper Class Judgment.** The amended final Judgment that
8 settled the Non-Pumper Class claims against the Public Water Suppliers approved by the Court
9 on September 22, 2011.

10 **3.5.24 Non-Stipulating Party.** Any Party who had not executed a
11 Stipulation for Entry of this Judgment prior to the date of approval of this Judgment by the Court.

12 **3.5.25 Overdraft.** Extractions in excess of the Safe Yield of water from
13 an aquifer, which over time will lead to a depletion of the water supply within a groundwater
14 basin as well as other detrimental effects, if the imbalance between pumping and extraction
15 continues.

16 **3.5.26 Overlying Production Rights.** The rights held by the Parties
17 identified in Exhibit 4, attached hereto and incorporated herein by reference.

18 **3.5.27 Party (Parties).** Any Person(s) that has (have) been named and
19 served or otherwise properly joined, or has (have) become subject to this Judgment and any prior
20 judgments of this Court in this Action and all their respective heirs, successors-in-interest and
21 assigns. For purposes of this Judgment, a “Person” includes any natural person, firm, association,
22 organization, joint venture, partnership, business, trust, corporation, or public entity.

23 **3.5.28 Pre-Rampdown Production.** The reasonable and beneficial use of
24 Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the
25 Production Right, whichever is greater.

26 **3.5.29 Produce(d).** To pump Groundwater for existing and future
27 reasonable beneficial uses.

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

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

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

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

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

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

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

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

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

1 **3.5.39 Replacement Obligation.** The obligation of a Producer to pay for
2 Replacement Water for Production of Groundwater from the Basin in any Year in excess of the
3 sum of such Producer’s Production Right and Imported Water Return Flows.

4 **3.5.40 Replacement Water.** Water purchased by the Watermaster or
5 otherwise provided to satisfy a Replacement Obligation.

6 **3.5.41 Replacement Water Assessment.** The amount charged by the
7 Watermaster to pay for all costs incurred by the Watermaster related to Replacement Water.

8 **3.5.42 Responsible Party.** The Person designated by a Party as the
9 Person responsible for purposes of filing reports and receiving notices pursuant to the provisions
10 of this Judgment.

11 **3.5.43 Safe Yield.** The amount of annual extractions of water from the
12 Basin over time equal to the amount of water needed to recharge the Groundwater aquifer and
13 maintain it in equilibrium, plus any temporary surplus. [*City of Los Angeles v. City of San*
14 *Fernando* (1975) 14 Cal. 3d 199, 278.]

15 **3.5.44 Small Pumper Class.** All private (i.e., non-governmental)
16 Persons and entities that own real property within the Basin, as adjudicated, and that have been
17 pumping less than 25 acre-feet per Year on their property during any Year from 1946 to the
18 present. The Small Pumper Class excludes the defendants in *Wood v. Los Angeles Co.*
19 *Waterworks Dist. 40, et al.*, any Person, firm, trust, corporation, or other entity in which any such
20 defendants has a controlling interest or which is related to or affiliated with any such defendants,
21 and the representatives, heirs, affiliates, successors-in-interest or assigns of any such excluded
22 party. The Small Pumper Class also excludes all Persons and entities that are shareholders in a
23 mutual water company. The Small Pumper Class does not include those who opted out of the
24 Small Pumper Class.

25 **3.5.45 Small Pumper Class Members.** Individual members of the Small
26 Pumper Class who meet the Small Pumper Class definition, and for purposes of this Judgment
27 and any terms pertaining to water rights, where two or more Small Pumper Class Members reside
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1 in the same household, they shall be treated as a single Small Pumper Class Member for purposes
2 of determining water rights.

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

10 **3.5.47 State Water Project.** Water storage and conveyance facilities
11 operated by the State of California Department of Water Resources from which it delivers water
12 diverted from the Feather River and the Sacramento-San Joaquin Delta via the California
13 Aqueduct to public agencies it has contracted with.

14 **3.5.48 Stipulating Party.** Any Party who has executed a Stipulation for
15 Entry of this Judgment prior to the date of approval of this Judgment by the Court.

16 **3.5.49 Stored Water.** Water held in storage in the Basin, as a result of
17 direct spreading or other methods, for subsequent withdrawal and use pursuant to agreement with
18 the Watermaster and as provided for in this Judgment. Stored Water does not include Imported
19 Water Return Flows.

20 **3.5.50 Subareas.** Portions of the Basin, as described in this document,
21 divided for management purposes.

22 **3.5.51 Total Safe Yield.** The amount of Groundwater that may be safely
23 pumped from the Basin on a long-term basis. Total Safe Yield is the sum of the Native Safe
24 Yield plus the Imported Water Return Flows.

25 **3.5.52 Watermaster.** The Person(s) appointed by the Court to administer
26 the provisions of this Judgment.

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

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

3.5.55 Year. Calendar year.

4. SAFE YIELD AND OVERDRAFT

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

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

5. PRODUCTION RIGHTS

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

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

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

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

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

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

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

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

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

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

26 **5.1.3.2** The primary means for monitoring the Small Pumper Class
27 Members' Groundwater use under the Physical Solution will be based on physical inspection by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **5.2.2 Water Imported Through AVEK.** The right to Produce Imported
24 Water Return Flows from water imported through AVEK belongs exclusively to the Parties
25 identified on Exhibit 8, attached hereto, and incorporated herein by reference. Each Party shown
26 on Exhibit 8 shall have a right to Produce an amount of Imported Water Return Flows in any
27 Year equal to the applicable percentage multiplied by the average amount of Imported Water used

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

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

24 **5.3 Rights to Recycled Water.** The owner of a waste water treatment plant
25 operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive
26 right to the Recycled Water as against anyone who has supplied the water discharged into the
27 waste water collection and treatment system. At the time of this Judgment those Parties that

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

5 **6. INJUNCTION**

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

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

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

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

6 **III. PHYSICAL SOLUTION**

7 7. **GENERAL**

8 7.1 **Purpose and Objective.** The Court finds that the Physical Solution
9 incorporated as part of this Judgment: (1) is a fair and equitable basis for satisfaction of all water
10 rights in the Basin; (2) is in furtherance of the State Constitution mandate and the State water
11 policy; and (3) takes into account water rights priorities, applicable public trust interests and the
12 Federal Reserved Water Right. The Court finds that the Physical Solution establishes a legal and
13 practical means for making the maximum reasonable and beneficial use of the waters of the Basin
14 by providing for the long-term Conjunctive Use of all available water in order to meet the
15 reasonable and beneficial use requirements of water users in the Basin. Therefore, the Court
16 adopts, and orders the Parties to comply with this Physical Solution.

17 7.2 **Need For Flexibility.** This Physical Solution must provide flexibility and
18 adaptability to allow the Court to use existing and future technological, social, institutional, and
19 economic options in order to maximize reasonable and beneficial water use in the Basin.

20 7.3 **General Pattern of Operations.** A fundamental premise of the Physical
21 Solution is that all Parties may Produce sufficient water to meet their reasonable and beneficial
22 use requirements in accordance with the terms of this Judgment. To the extent that Production by
23 a Producer exceeds such Producer's right to Produce a portion of the Total Safe Yield as provided
24 in this Judgment, the Producer will pay a Replacement Water Assessment to the Watermaster and
25 the Watermaster will provide Replacement Water to replace such excess production according to
26 the methods set forth in this Judgment.

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

3 **8.4 Drought Program During Rampdown for Participating Public Water**

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

9 **8.4.1** During the Rampdown period, District No. 40 agrees to purchase
10 from AVEK each Year at an amount equal to 70 percent of District No. 40's total annual demand
11 if that amount is available from AVEK at no more than the then current AVEK treated water rate.
12 If that amount is not available from AVEK, District No. 40 will purchase as much water as
13 AVEK makes available to District No. 40 at no more than the then current AVEK treated water
14 rate. Under no circumstances will District No. 40 be obligated to purchase more than 50,000
15 acre-feet of water annually from AVEK. Nothing in this Paragraph affects AVEK’s water
16 allocation procedures as established by its Board of Directors and AVEK’s Act.

17 **8.4.2** During the Rampdown period, the Drought Program Participants
18 each agree that, in order to minimize the amount of excess Groundwater Production in the Basin,
19 they will use all water made available by AVEK at no more than the then current AVEK treated
20 water rate in any Year in which they Produce Groundwater in excess of their respective rights to
21 Produce Groundwater under this Judgment. During the Rampdown period, no Production by a
22 Drought Program Participant shall be considered excess Groundwater Production exempt from a
23 Replacement Water Assessment under this Drought Program unless a Drought Program
24 Participant has utilized all water supplies available to it including its Production Right to Native
25 Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water
26 Rights, Imported Water, and Production rights previously transferred from another party.
27 Likewise, no Production by a Drought Program Participant will be considered excess

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

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

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

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

18 **9. ASSESSMENTS.**

19 **9.1 Administrative Assessment.** Administrative Assessments to fund the
20 Administrative Budget adopted by the Watermaster shall be levied uniformly on an annual basis
21 against (1) each acre foot of a Party's Production Right as described in Paragraph 5.1, (2) each
22 acre foot of a Party's right to Produce Imported Water Return Flows as determined pursuant to
23 Paragraph 5.2, (3) each acre foot of a Party's Production for which a Replacement Water
24 Assessment has been imposed pursuant to Paragraph 9.2, and (4) during the Rampdown, each
25 acre foot of a Party's Production in excess of (1)-(3), above, excluding Production from Stored
26 Water and/or Carry Over water, except that the United States shall be subject to the
27 Administrative Assessment only on the actual Production of the United States. During the

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

6 **9.2 Replacement Water Assessment.** In order to ensure that each Party may
7 fully exercise its Production Right, there will be a Replacement Water Assessment. Except as is
8 determined to be exempt during the Rampdown period pursuant to the Drought Program provided
9 for in Paragraph 8.4, the Watermaster shall impose the Replacement Water Assessment on any
10 Producer whose Production of Groundwater from the Basin in any Year is in excess of the sum of
11 such Producer's Production Right and Imported Water Return Flow available in that Year,
12 provided that no Replacement Water Assessment shall be imposed on the United States except
13 upon the United States' written consent to such imposition based on the appropriation by
14 Congress, and the apportionment by the Office of Management and Budget, of funds that are
15 available for the purpose of, and sufficient for, paying the United States' Replacement Water
16 Assessment. The Replacement Water Assessment shall not be imposed on the Production of
17 Stored Water, In-Lieu Production or Production of Imported Water Return Flows. The amount of
18 the Replacement Water Assessment shall be the amount of such excess Production multiplied by
19 the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs.
20 All Replacement Water Assessments collected by the Watermaster shall be used to acquire
21 Imported Water from AVEK, Littlerock Creek Irrigation District, Palmdale Water District, or
22 other entities. AVEK shall use its best efforts to acquire as much Imported Water as possible in a
23 timely manner. If the Watermaster encounters delays in acquiring Imported Water which, due to
24 cost increases, results in collected assessment proceeds being insufficient to purchase all Imported
25 Water for which the Assessments were made, the Watermaster shall purchase as much water as
26 the proceeds will allow when the water becomes available. If available Imported Water is
27 insufficient to fully meet the Replacement Water obligations under contracts, the Watermaster

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

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

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

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

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

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

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

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

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

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

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

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

26 **11. INCREASE IN PRODUCTION BY THE UNITED STATES.**
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1 **11.1 Notice of Increase of Production Under Federal Reserved Water**

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

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

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

19 **12.1 No Requirement to Move Public Water Suppliers' Production Wells.**

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

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

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

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

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

19 **15. CARRY OVER**

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

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

25 **15.3 Production Right Carry Over.** If a Producer identified in Paragraph
26 5.1.1, 5.1.5 and 5.1.6 fails to Produce its full Production Right in any Year, the Producer may
27 Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years. A

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

11 **16. TRANSFERS.**

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

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

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

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

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

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

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

23 **17.2 Change in Point of Extraction by the United States.** The point(s) of
24 extraction for the Federal Reserved Water Right may be changed, at the sole discretion of the
25 United States, and not subject to the preceding limitation on Material Injury, to any point or
26 points within the boundaries of Edwards Air Force Base or Plant 42. The point(s) of extraction
27 for the Federal Reserved Water Right may be changed to points outside the boundaries of

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

8 **18. WATERMASTER**

9 **18.1 Appointment of Initial Watermaster.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **18.4.5 Annual Administrative Budget.** The Watermaster shall prepare a
25 proposed administrative budget for each Year. The Watermaster shall hold a public hearing
26 regarding the proposed administrative budget and adopt an administrative budget. The
27 administrative budget shall set forth budgeted items and Administrative Assessments in sufficient

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

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

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

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

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

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

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

26 **18.4.12 Assessment Procedure.** Each Party hereto is ordered to pay the
27 assessments authorized in Paragraph 9 of this Judgment, which shall be levied and collected in
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1 **18.5.2 Reduction in Groundwater Production.** The Watermaster
2 Engineer shall ensure that reductions of Groundwater Production to the Native Safe Yield
3 (Rampdown) take place pursuant to the terms of this Judgment and any orders by the Court.

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

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

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

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

24 **18.5.7 Purchases of and Recharge with Replacement Water.** To the
25 extent Imported Water is available, the Watermaster Engineer shall use Replacement Water
26 Assessment proceeds to purchase Replacement Water, and deliver such water to the area deemed
27 most appropriate as soon as practicable. The Watermaster Engineer may pre-purchase

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

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

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

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

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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

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

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

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

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

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

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

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

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

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1 **18.5.13.1.7** Preparation of a water conservation plan, approved
2 and stamped by a California licensed and registered professional civil engineer, demonstrating
3 that the New Production will be designed, constructed and implemented consistent with
4 California best water management practices.

5 **18.5.13.1.8** Preparation of an analysis of the economic impact of
6 the New Production on the Basin and other Producers in the Subarea of the Basin;

7 **18.5.13.1.9** Preparation of an analysis of the physical impact of
8 the New Production on the Basin and other Producers in the Subarea of the Basin;

9 **18.5.13.1.10** A written statement, signed by a California licensed
10 and registered professional civil engineer, determining that the New Production will not cause
11 Material Injury;

12 **18.5.13.1.11** Written confirmation that the applicant agrees to pay
13 the applicable Replacement Water Assessment for any New Production.

14 **18.5.13.1.12** Other pertinent information which the Watermaster
15 Engineer may require.

16 **18.5.13.2** **Finding of No Material Injury.** The Watermaster Engineer
17 shall not make recommendation for approval of an application to commence New Production of
18 Groundwater unless the Watermaster Engineer finds, after considering all the facts and
19 circumstances including any requirement that the applicant pay a Replacement Water Assessment
20 required by this Judgment or determined by the Watermaster Engineer to be required under the
21 circumstances, that such New Production will not cause Material Injury. If the New Production is
22 limited to domestic use for one single-family household, the Watermaster Engineer has the
23 authority to determine the New Production to be *de minimis* and waive payment of a Replacement
24 Water Assessment; *provided*, the right to Produce such *de minimis* Groundwater is not
25 transferable, and shall not alter the Production Rights decreed in this Judgment.

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

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

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

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

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

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1 Base and the State of California shall be ex officio members of the committee. The United States
2 may also appoint a DoD Liaison to the Watermaster pursuant to Joint Ethics Regulation 3-201.

3 **19.5 Subarea Advisory Management Committees.** Subarea Advisory
4 Management Committees will meet on a regular basis and at least semi-annually with the
5 Watermaster Engineer to review Watermaster activities pursuant to this Judgment and to submit
6 advisory recommendations.

7 **19.5.1 Authorization.** The Producers in each of the five Management
8 Subareas are hereby authorized and directed to cause committees of Producer representatives to
9 be organized and to act as Subarea Management Advisory Committees.

10 **19.5.2 Composition and Election.** Each Management Subarea
11 Management Advisory Committee shall consist of five (5) Persons who shall be called
12 Management Advisors. In the election of Management Advisors, every Party shall be entitled to
13 one vote for every acre-foot of Production Right for that Party in that particular subarea. Parties
14 may cumulate their votes and give one candidate a number of votes equal to the number of
15 advisors to be elected, multiplied by the number of votes to which the Party is normally entitled,
16 or distribute the Party's votes on the same principle among as many candidates as the Party thinks
17 fit. In any election of advisors, the candidates receiving the highest number of affirmative votes
18 of the Parties are elected. Elections shall be held upon entry of this Judgment and thereafter
19 every third Year. In the event a vacancy arises, a temporary advisor shall be appointed by
20 unanimous decision of the other four advisors to continue in office until the next scheduled
21 election. Rules and regulations regarding organization, meetings and other activities shall be at
22 the discretion of the individual Subarea Advisory Committees, except that all meetings of the
23 committees shall be open to the public.

24 **19.5.3 Compensation.** The Subarea Management Advisory
25 Committee shall serve without compensation.

26 **19.5.4 Powers and Functions.** The Subarea Management Advisory
27 Committee for each subarea shall act in an advisory capacity only and shall have the duty to
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1 study, review and make recommendations on all discretionary determinations made or to be made
2 hereunder by Watermaster Engineer which may affect that subarea.

3 **20. MISCELLANEOUS PROVISIONS.**

4 **20.1 Water Quality.** Nothing in this Judgment shall be interpreted as relieving
5 any Party of its responsibilities to comply with State or Federal laws for the protection of water
6 quality or the provisions of any permits, standards, requirements, or orders promulgated
7 thereunder.

8 **20.2 Actions Not Subject to CEQA Regulation.** Nothing in this Judgment or
9 the Physical Solution, or in the implementation thereof, or the decisions of the Watermaster
10 acting under the authority of this Judgment shall be deemed a "project" subject to the California
11 Environmental Quality Act (CEQA). See e.g., *California American Water v. City of Seaside*
12 (2010) 183 Cal.App.4th 471, and *Hillside Memorial Park & Mortuary v. Golden State Water Co.*
13 (2011) 205 Cal.App.4th 534. Neither the Watermaster, the Watermaster Engineer, the Advisory
14 Committee, any Subarea Management Committee, nor any other Board or committee formed
15 pursuant to the Physical Solution and under the authority of this Judgment shall be deemed a
16 "public agency" subject to CEQA. (See Public Resources Code section 21063.)

17 **20.3 Court Review of Watermaster Actions.** Any action, decision, rule,
18 regulation, or procedure of Watermaster or the Watermaster Engineer pursuant to this Judgment
19 shall be subject to review by the Court on its own motion or on timely motion by any Party as
20 follows:

21 **20.3.1 Effective Date of Watermaster Action.** Any order, decision or
22 action of Watermaster or Watermaster Engineer pursuant to this Judgment on noticed specific
23 agenda items shall be deemed to have occurred on the date of the order, decision or action.

24 **20.3.2 Notice of Motion.** Any Party may move the Court for review of an
25 action or decision pursuant to this Judgment by way of a noticed motion. The motion shall be
26 served pursuant to Paragraph 20.7 of this Judgment. The moving Party shall ensure that the
27 Watermaster is served with the motion under that Paragraph 20.7 or, if electronic service of the

1 Watermaster is not possible, by overnight mail with prepaid next-day delivery. Unless ordered by
2 the Court, any such petition shall not operate to stay the effect of any action or decision which is
3 challenged.

4 **20.3.3 Time for Motion.** A Party shall file a motion to review any action
5 or decision within ninety (90) days after such action or decision, except that motions to review
6 assessments hereunder shall be filed within thirty (30) days of Watermaster mailing notice of the
7 assessment.

8 **20.3.4 De Novo Nature of Proceeding.** Upon filing of a motion to review
9 a decision or action, the Watermaster shall notify the Parties of a date for a hearing at which time
10 the Court shall take evidence and hear argument. The Court's review shall be *de novo* and the
11 Watermaster's decision or action shall have no evidentiary weight in such proceeding.

12 **20.3.5 Decision.** The decision of the Court in such proceeding shall be an
13 appealable supplemental order in this case. When the Court's decision is final, it shall be binding
14 upon Watermaster and the Parties.

15 **20.4 Multiple Production Rights.** A Party simultaneously may be a member
16 of the Small Pumper Class and hold an Overlying Production Right by virtue of owning land
17 other than the parcel(s) meeting the Small Pumper Class definition. The Small Pumper Class
18 definition shall be construed in accordance with Paragraph 3.5.44 and 3.5.45.

19 **20.5 Payment of Assessments.** Payment of assessments levied by Watermaster
20 hereunder shall be made pursuant to the time schedule developed by the Watermaster,
21 notwithstanding any motion for review of Watermaster actions, decisions, rules or procedures,
22 including review of assessments implemented by the Watermaster.

23 **20.6 Designation of Address for Notice and Service.** Each Party shall
24 designate a name and address to be used for purposes of all subsequent notices and service herein,
25 either by its endorsement on this Judgment or by a separate designation to be filed within thirty
26 (30) days after judgment has been entered. A Party may change its designation by filing a written
27 notice of such change with Watermaster. A Party that desires to be relieved of receiving notices

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1 of Watermaster activity may file a waiver of notice in a form to be provided by Watermaster. At
2 all times, Watermaster shall maintain a current list of Parties to whom notices are to be sent and
3 their addresses for purpose of service. Watermaster shall also maintain a full current list of said
4 names and addresses of all Parties or their successors, as filed herein. Watermaster shall make
5 copies of such lists available to any requesting Person. If no designation is made, a Party's
6 designee shall be deemed to be, in order of priority: (1) the Party's attorney of record; (2) if the
7 Party does not have an attorney of record, the Party itself at the address on the Watermaster list;
8 (3) for Small Pumper Class Members, after this Judgment is final, the individual Small Pumper
9 Class Members at the service address maintained by the Watermaster.

10 **20.7 Service of Documents.** Unless otherwise ordered by the Court, delivery to
11 or service to any Party by the Court or any Party of any document required to be served upon or
12 delivered to a Party pursuant to this Judgment shall be deemed made if made by e-filing on the
13 Court's website at www.scefiling.org. All Parties agree to waive service by mail if they receive
14 notifications via electronic filing at the above identified website.

15 **20.8 No Abandonment of Rights.** In the interest of the Basin and its water
16 supply, and the principle of reasonable and beneficial use, no Party shall be encouraged to
17 Produce and use more water in any Year than is reasonably required. Failure to Produce all of the
18 Groundwater to which a Party is entitled shall not, in and of itself, be deemed or constitute an
19 abandonment of such Party's right, in whole or in part, except as specified in Paragraph 15.

20 **20.9 Intervention After Judgment.** Any Person who is not a Party or
21 successor to a Party and who proposes to Produce Groundwater from the Basin, to store water in
22 the Basin, to acquire a Production Right or to otherwise take actions that may affect the Basin's
23 Groundwater is required to seek to become a Party subject to this Judgment through a noticed
24 motion to intervene in this Judgment prior to commencing Production. Prior to filing such a
25 motion, a proposed intervenor shall consult with the Watermaster Engineer and seek the
26 Watermaster's stipulation to the proposed intervention. A proposed intervenor's failure to consult
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1 with the Watermaster Engineer may be grounds for denying the intervention motion. Thereafter,
2 if approved by the Court, such intervenor shall be a Party bound by this Judgment.

3 **20.10 Judgment Binding on Successors, etc.** Subject to specific provisions
4 hereinbefore contained, this Judgment applies to and is binding upon, and inures to the benefit of
5 the Parties to this Action and all their respective heirs, successors-in-interest and assigns.

6 **20.11 Costs.** Except subject to any existing court orders, each Party shall bear its
7 own costs and attorneys fees arising from the Action.

8 **20.12 Headings; Paragraph References.** Captions and headings appearing in
9 this Judgment are inserted solely as reference aids for ease and convenience; they shall not be
10 deemed to define or limit the scope or substance of the provisions they introduce, nor shall they
11 be used in construing the intent or effect of such provisions.

12 **20.13 No Third Party Beneficiaries.** There are no intended third party
13 beneficiaries of any right or obligation of the Parties.

14 **20.14 Severability.** Except as specifically provided herein, the provisions of this
15 Judgment are not severable.

16 **20.15 Cooperation; Further Acts.** The Parties shall fully cooperate with one
17 another, and shall take any additional acts or sign any additional documents as may be necessary,
18 appropriate or convenient to attain the purposes of this Judgment.

19 **20.16 Exhibits and Other Writings.** Any and all exhibits, documents,
20 instruments, certificates or other writings attached hereto or required or provided for by this
21 Judgment, if any, shall be part of this Judgment and shall be considered set forth in full at each
22 reference thereto in this Judgment.

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Dated:

JUDGE OF THE SUPERIOR COURT

Producer Name	Non-Overlying Production Rights (in Acre-Feet)	Percentage Share of Adjusted Native Safe Yield
Los Angeles County Waterworks District No. 40	6,789.26	9.605%
Palmdale Water District	2,769.63	3.918%
Little Rock Creek Irrigation District	796.58	1.127%
Quartz Hill Water District	563.73	0.798%
Rosamond Community Services District	404.42	0.572%
Palm Ranch Irrigation District	465.69	0.659%
Desert Lake Community Services District	73.53	0.104%
California Water Service Company	343.14	0.485%
North Edwards Water District	49.02	0.069%
Boron Community Services District	50.00	0.071%
West Valley County Water District	40.00	0.057%
Total Acre Feet:	12,345.00	

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OF ORIGINAL FILED
Los Angeles Superior Court**

JUL 18 2011

John A. Clarke, Executive Officer/Clerk

By Paul Sanchez Dept

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

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

**STATEMENT OF DECISION
PHASE THREE TRIAL**

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

Judge: Honorable Jack Komar

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

*Antelope Valley Groundwater Litigation (Consolidated Cases)
Los Angeles County Superior Court, Lead Case No. BC 325 201*

1-05-CV-049053

EXHIBIT 5

Judgment and Physical Solution

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The standard for a statement of decision as set forth in Code of Civil Procedure section 632 requires a court to explain “. . . the legal and factual basis for its decision as to each of the principal controverted issues at trial. . . .” Case law is clear that a court must provide the factual and legal basis for the decision on those issues only closely related to the ultimate issues on the case. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It is also clear that a court need not respond to requests that are in the nature of “interrogatories.” (See *id.* at pp. 525-526.)

The only issues at this phase of the trial were simply to determine whether the adjudication area aquifer is in a current state of overdraft and as part of that adjudication to determine the safe yield. This Statement of Decision focuses solely on those issues.

Cross-complainants Los Angeles County Waterworks District No. 40, City of Palmdale, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company, Rosamond Community Service District, Phelan Piñon Hills Community Services District, Desert Lake Community Services District, North Edwards Water District (collectively, the “Public Water Producers”)¹ brought an action for, *inter alia*, declaratory relief, alleging that the Antelope Valley adjudication area groundwater aquifer was in a state of overdraft and required judicial intervention to provide for management of the water resources within the aquifer to prevent depletion of the aquifer and damage to the Antelope Valley basin.

Several of the cross-defendant parties (collectively, the “Land Owner Group”) also sought declaratory relief in their various independent (now coordinated and consolidated) actions.

¹ The United States and the City of Los Angeles, though not water suppliers in the Antelope Valley adjudication area, joined with the Public Water Producers. Rosamond Community Services District joined with the Land Owner Group.

1 The first issues to be decided in the declaratory relief cause of action are the issues of
2 overdraft and safe yield. The remaining causes of action and issues are to be tried in a
3 subsequent phase or phases.

4 This Phase Three trial commenced on January 4, 2011 and continued thereafter on
5 various days based upon the needs of the various parties and the Court's availability.
6 Appearances of counsel are noted in the minutes of the Court.

7 At the conclusion of the evidence, the Court offered counsel the opportunity to provide
8 written final arguments and the invitation was declined by all counsel. On April 13, 2011, the
9 Court heard oral argument and the matter was ordered submitted.

10 The Public Water Producers (and others) have alleged that the basin is in a condition of
11 overdraft and have requested that the Court determine a safe yield and consider imposition of a
12 physical solution or other remedy to prevent further depletion of the water resource and
13 degradation of the condition of the aquifer.

14 Several parties in opposition to the request of the Public Water Producers have
15 contended that while there may have been overdraft in the past, currently the aquifer has
16 recovered and is not in overdraft. These same parties contend that it is not possible to establish
17 a single value for safe yield; instead they have requested that the Court determine a range of
18 values for safe yield.

19 The Court concludes that the Public Water Producers have the burden of proof and that
20 the burden must be satisfied for this phase and purpose by a preponderance of the evidence.
21 This burden of proof may or may not be appropriate to other phases of this trial. And since the
22 findings here have no application to other phases, such as prescription or rights of appropriators,
23 and the parties have not briefed those or other issues, the Court makes no conclusions as to what
24 standard of proof might be applicable to such other issues or phases of trial.

25 The law defines overdraft as extractions in excess of the "safe yield" of water from an
26 aquifer, which over time will lead to a depletion of the water supply within a groundwater basin
27 as well as other detrimental effects, if the imbalance between pumping and extraction
28 continues. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d 199; *City of*

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1 *Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 929; *Orange County Water District v.*
2 *City of Riverside* (1959) 173 Cal. App. 2d 137.) “Safe yield” is the amount of annual
3 extractions of water from the aquifer over time equal to the amount of water needed to recharge
4 the groundwater aquifer and maintain it in equilibrium, plus any temporary surplus. Temporary
5 surplus is defined as that amount of water that may be pumped from an aquifer to make room to
6 store future water that would otherwise be wasted and unavailable for use.

7 Determination of safe yield and overdraft requires the expert opinions of hydrologists and
8 geologists.² Experts in the field of hydrogeology routinely base their opinions and conclusions
9 concerning groundwater basin overdraft on evidence of long-term lowering of groundwater
10 levels, loss of groundwater storage, declining water quality, seawater intrusion (not an issue in
11 this case), land subsidence, and the like. Experts also conduct a sophisticated analysis of
12 precipitation and its runoff, stream flow, and infiltration into the aquifer, including such things as
13 evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), as
14 well as the nature and quantity of extractions from the aquifer and return flows therefrom.
15

16 Generally, neither overdraft nor safe yield can be determined by looking at a
17 groundwater basin in a single year but must be determined by evaluating the basin conditions
18 over a sufficient period of time to determine whether pumping rates have or will lead to
19 eventual permanent lowering of the water level in the aquifer and ultimately depletion of the
20 water supply or other harm. Recharge must equal discharge over the long term. (*City of Los*
21 *Angeles v. City of San Fernando, supra*, 14 Cal. 3rd at pp. 278-279.) But having heard
22 evidence about the aquifer as a whole, the Court is not making historical findings that would be
23 applicable to specific areas of the aquifer or that could be used in a specific way to determine
24 water rights in particular areas of the aquifer.
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27
28 ² All the experts offer estimates. *The American Heritage College Dictionary*, Third Edition, defines an “estimate”
as, *inter alia*, “[a] rough calculation, as of size” or “[a] judgment based on one’s impressions; an opinion.”

1 The location of the Antelope Valley adjudication area boundaries was the subject of the
2 Phase One and Two trials in this matter. The Court defined the boundaries of the valley aquifer
3 based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity
4 with the aquifer, an area was excluded from the adjudication. The degree of hydro-connectivity
5 within the Antelope Valley adjudication area varies from area to area. Some areas seemingly
6 have fairly small or nominal hydro-connectivity but must be included in this phase of the
7 adjudication unless the connection is *de minimis*.³ Pumping in those parts of the aquifer may be
8 shown to have *de minimis* effect on other parts of the aquifer while pumping in other areas
9 within the basin appear to have material impacts on adjacent parts of the basin. All areas were
10 included within the adjudication area because they all have some level of hydro-connection,
11 some more and some less. How to deal with those differences is ultimately a basin management
12 decision that is well beyond the scope of this phase of trial.
13

14 **Overdraft**

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17 The preponderance of the evidence presented establishes that the adjudication area
18 aquifer is in a state of overdraft. Reliable estimates of the long-term extractions from the basin
19 have exceeded reliable estimates of the basin's recharge by significant margins, and empirical
20 evidence of overdraft in the basin corroborates that conclusion. Portions of the aquifer have
21 sustained a significant loss of groundwater storage since 1951. While pumping in recent years
22 has reduced and moderated, the margin between pumping and recharge as cultural conditions
23 have changed and precipitation has increased (with the appearance of wetter parts of the
24 historical cycle), pumping in some areas of the aquifer is continuing to cause harm to the basin.
25 The evidence is persuasive that current extractions exceed recharge and therefore that the basin is
26

27
28 ³ The court may exclude truly *de minimis* connectivity areas based upon evidence in later phases of the trial if
shown to have virtually no impact on the aquifer.

1 in a state of overdraft. Since 1951⁴ there is evidence of periods of substantial pumping
2 (principally agricultural in the early years of the period) coinciding with periods of drought, with
3 almost continuous lowering of water levels and severe subsidence in some areas extending to the
4 present time, with intervals of slight rises in water levels in some areas.

5 Areas of increased pumping, with concomitant lowering of water levels, can have a
6 serious effect on water rights in other areas, caused by cones of depression, which alter natural
7 water flow gradients, causing the lowering of water levels in adjacent areas, with resulting
8 subsidence and loss of aquifer storage capacity. Given population growth, and agricultural and
9 industrial changes, the valley is at risk of being in an even more serious continuing overdraft in
10 the future unless pumping is controlled.

11 While the lowering of current water levels has slowed, and some levels in wells in some
12 areas have risen in recent years, significant areas within the aquifer continue to show declining
13 levels, some slightly so, but many with material lowering of water levels.

14 Thus, the Antelope Valley adjudication area is in a state of overdraft based on estimates
15 of extraction and recharge, corroborated by physical evidence of conditions in the basin, and
16 while the annual amount of overdraft has lessened in recent years with increased precipitation
17 and recharge, the effects of overdraft remain and are in danger of being exacerbated with
18 increased pumping and the prospective cyclical precipitation fluctuations shown by the historical
19 record. The physical evidence establishes that there was significant subsidence occurring in
20 parts of the adjudication area ranging from two to six feet or more in certain areas of the valley
21 caused by such pumping and that measurable water levels fell in a substantial part of the valley.
22 While some of the ongoing subsidence may be attributable to residual subsidence (from earlier
23 periods of shortfall) that would not seem to be an explanation for the extent of continued
24 subsidence. The evidence establishes that ground water extractions in excess of recharge are a
25 cause as well.
26
27

28 ⁴ Precipitation and well records prior to that year are too sketchy to be relied upon.

1 **Safe Yield**

2
3 A calculation of safe yield is necessary to manage the basin or create a physical solution
4 to a potential or actual continuing overdraft. A determination of safe yield requires an initial
5 determination of average annual natural or native recharge to the aquifer from all sources. The
6 only source of natural or native recharge for the Antelope Valley is precipitation that recharges
7 the aquifer and it is therefore necessary to ascertain average annual precipitation. The
8 calculation of annual average precipitation can only be determined by using a baseline study
9 period that covers precipitation in periods of drought and periods of abundant precipitation over
10 a sufficient period of time that a reliable estimate of average future recharge based on
11 precipitation can be made.

12
13 It has been suggested that safe yield could be based on using shorter base periods or more
14 than one base period, (the total time span of which was considerably less than the 50 year period
15 the Court believes is more credible). If the purpose of selecting a base period is to determine
16 average recharge over time based on precipitation, choosing two consecutive periods of time
17 with two different average numbers would not serve that purpose and would preclude estimating
18 a single safe yield. Likewise, selecting a base period that does not have completely representative
19 precipitation cycles over time would not provide an accurate evaluation of conditions in the
20 valley. A base period that calculates average precipitation over a representative period of time
21 permits reliable predictions about future natural recharge based on regular recurring precipitation
22 cycles. A period of precipitation fluctuations from 1951 to 2005 satisfies that standard. Shorter
23 periods do not.

24 The Court finds that current extraction of water from the aquifer by all pumping ranges
25 from 130,000 to 150,000 acre feet a year, but in any event, is in excess of average annual
26 recharge. The major area of dispute between the parties is the average amount of natural
27 recharge, which also involves disputes concerning return flows, the amount of native vegetation
28 water needs, evapotranspiration, stream flow, runoff, groundwater infiltration, specific yield, lag

1 time, bedrock infiltration, agricultural crop needs, and the like. Other sources of recharge to the
2 basin, including artificial recharge-water pumped into the aquifer from external sources are not
3 in dispute.

4 Evidence established that during the entire historical period presented, populations
5 increased within the valley and water use changed in a variety of ways. There has been a shift in
6 some areas to urban uses and away from agriculture although in recent years agricultural
7 pumping has also increased. The nature of agricultural duties has changed as well. The type of
8 irrigation used by farmers has become more efficient and less water is needed per acre
9 (depending on the crops grown) with more efficient uses of water. But there has also been an
10 increase as well as a change in the nature of the type of agriculture in the valley in material
11 quantities in recent years. More of such changes may occur and it is important to both current
12 and future generations to ensure that the water resources within the basin are managed prudently.

13 The Court heard from a very large number of experts, some of whom have provided
14 opinion testimony of what constitutes safe yield. All the experts testifying acknowledged that
15 changes in the selection of a base study period, lag time, agricultural water duties,
16 evapotranspiration, specific yield, runoff quantities, well level contours, bedrock infiltration,
17 return flows, playa evaporation relating to run off and bedrock infiltration, chloride
18 measurements, satellite imaging, and agricultural and municipal pumping estimates, among
19 others, would affect the ultimate opinion of natural recharge and return flows.

20 The opinions of all the experts are estimates, based upon their professional opinion. All
21 of the opinions were critiqued by other experts who often had different opinions. The Court
22 recognizes the imprecision of the various estimates and the fact that an estimate by definition is
23 imprecise. But the fact that estimates lack precision does not mean that the Court cannot rely
24 upon such estimates. The scientific community relies upon such estimates in the field of
25 hydrogeology and the Court must do the same.

26 Reasonable experts can differ as to reasonable estimates of natural recharge and
27 virtually all other components of water budgets, computations of change of storage, and the
28

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1 like, all the while using the same formulae and scientific principles to reach their conclusion.
2 For example, all the experts could agree on the definition of "Darcy's Law" and the physics
3 principle of "conservation of mass" but still reach different conclusions.

4 Some of the experts opined that the basin was not in overdraft and that recharge was in
5 excess of or in balance with extractions so that there was a surplus in the aquifer. One expert
6 opined that loss of storage was merely space for temporary storage. Observable conditions in the
7 valley are inconsistent with those conclusions. If there were a surplus, even in the shortened
8 base periods used by the some experts, there should not be subsidence of land, nor the need to
9 drill for water at deeper and deeper levels in those parts of the aquifer most affected by the
10 overdraft. The physical condition of the valley is inconsistent with those estimates that there is
11 and has been a surplus of water in the aquifer.

12
13 The selection of a safe yield number for an aquifer the size of the Antelope Valley is
14 made difficult because of not only its size but because of the complexity of its geology. As
15 reflected above, hydro-connectivity and conductivity varies considerably between various parts
16 of the aquifer. The hydro-connectivity between some portions of the adjudication area aquifer
17 and others is so slight as to be almost (apparently) nonexistent. Pumping in those areas may
18 have little or no effect on other areas of the aquifer. The Antelope Valley basin is not like a
19 bathtub where lowering and raising of water levels is equal in all parts of the "tub."


20 Therefore, assigning a safe yield number (what quantity of pumping from the basin will
21 maintain equilibrium in the aquifer) may require different numbers for different parts of the
22 aquifer (and clearly may also provide for some level of separate management). No attempt has
23 been made in this phase of trial to define geological differences in the valley that would justify
24 different safe yield numbers for different parts of the valley in light of the decision in Phase Two
25 regarding connectivity (the Phase Two trial focused on hydro-connectivity for purposes of
26 determining necessary parties to the action).

27 Weighing the various opinions of the experts, however, the Court finds by a
28 preponderance of the evidence that conservatively setting a safe yield at 110,000 acre feet a

1 year will permit management of the valley in such a way as to preserve the rights of all parties
2 in accordance with the Constitution and laws of the State of California. Some portions of the
3 aquifer receive more recharge than others and pumping requirements vary. These differences
4 require management decisions that respect the differences in both the geology and the cultural
5 needs of the diverse parts of the valley.

6 It should not be assumed that the safe yield management number may not change as
7 climate circumstances and pumping may change, or as the empirical evidence based on
8 experience in managing the basin suggests it is either too high or too low.
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12 Dated: JUL 13 2011


13 Hon. Jack Komar
14 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 August 24, 2021, I served the foregoing document described as **RESPONDENT'S APPENDIX** 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