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6 Attorneys for
7 Antelope Valley Watermaster

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

10
11 Coordination Proceeding,
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

12
13 **ANTELOPE VALLEY**
14 **GROUNDWATER CASES**

LASC Case No.: BC 325201

Santa Clara Court Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar, Judge of
the Santa Clara Superior Court

**WATERMASTER'S REPLY TO TAPIA'S
OPPOSITION TO FIRST AMENDED
MOTION FOR MONETARY,
DECLARATORY AND INJUNCTIVE
RELIEF**

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16
17
18 **AND ALL RELATED ACTIONS**

Date: December 10, 2021
Time: 9:00 a.m.
Dept: By Zoom

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21 **I. Introduction**

22 In their Opposition to the Antelope Valley Watermaster's ("**Watermaster**") First
23 Amended Motion for Monetary, Declaratory and Injunctive Relief ("**Motion**"), Primo Tapia,
24 Successor Trustee of the Charles and Nellie Tapia Family Trust established u/t/a dated January
25 12, 1990 ("**C&N Trust**"), and Thomas Tapia, as Co-Trustee of the Felix and Eulalia Tapia
26 Family Trust established u/t/a dated February 18, 1997 ("**F&E Trust**" and collectively with C&N
27 Trust, the "**Tapia Trusts**") do not dispute the principal amount of RWAs requested in the Motion,
28 but make the following arguments:

1 (1) The Tapia Trusts are not liable for the relief demanded in the Motion, but rather
2 Tapia Bros., Inc., a California corporation is the only potentially liable party;

3 (2) The declaratory and injunctive relief requested in the Motion is not warranted
4 because the Tapia Parties have allegedly ceased all groundwater production; and

5 (3) The Watermaster is not entitled to collect either the interest on the delinquent
6 Replacement Water Assessments (“RWAs”), or the attorneys’ fees demanded in the Motion.

7 Each of the Tapia Trusts’ arguments must fail as follows:

8 (1) The C&N Trust, as the owner of the real property identified with Kern County
9 Assessor’s Parcel Number 374-020-53-00-6 (the “**Property**”), is a named Party to the Judgment.
10 Because the Tapia Trusts are collectively the landowners of the Property where the groundwater
11 at issue was pumped and used, they are liable for the relief requested in the Motion.

12 (2) The Tapia Trusts are in violation of the Judgment for failing to pay the undisputed
13 RWAs, which are necessary for the Watermaster to purchase Replacement Water in order to
14 alleviate harm to the Basin caused by the Tapia Trusts’ production in excess of what they are
15 allowed under the Judgment. The Judgment explicitly authorizes the Watermaster to seek
16 injunctive and declaratory relief to prevent a Party from further groundwater production until a
17 Party has satisfied their Replacement Obligations, and injunctive and declaratory relief is
18 appropriate in this case notwithstanding the Tapia Trusts’ unsubstantiated representations that
19 they will not produce any further groundwater.

20 (3) The Judgment explicitly authorizes the Watermaster to collect interest on
21 delinquent RWAs “at the then current real property tax delinquency rate for the county in which
22 the property of the delinquent Party is located.” The Watermaster is seeking interest at the
23 “delinquency rate” for real property taxes in Kern County, and the Tapia Trusts have not
24 identified any other applicable interest rate under these circumstances. Moreover, the Judgment
25 explicitly allows the Watermaster to recover its attorneys’ fees incurred in seeking to collect
26 delinquent RWAs, and the time has long past for the Tapia Trusts to challenge this provision of
27 the Judgment. Neither the Tapia Trusts nor this Court may amend the Judgment at this point in
28 time.

1 **II. The Amount of RWAs Owed Is Undisputed**

2 The Tapia Trusts do not dispute the principal amount of RWAs owed: \$183,022.68 in
3 RWAs for 2018 and 2019, which represents the Tapia Parties' self-reported use of a total of 334
4 acre-feet in 2018 and 98.476 acre-feet in 2019. (Oppo. at p. 2, lines 8-10.) The Tapia Trusts
5 and/or Tapia Bros., Inc. are liable for this amount at the very least, and the Court should enter a
6 monetary judgment accordingly.

7 **III. The Tapia Trusts Are Liable for All Monetary Relief Demanded In the Motion**

8 The Tapia Trusts allege that they are not liable for the delinquent RWAs, interest thereon,
9 or the attorneys' fees demanded in the Watermaster's Motion. Rather, the Tapia Trusts allege that
10 Tapia Bros Inc., as the party that allegedly pumped and used the groundwater at issue, is the only
11 potentially liable party. The Tapia Trusts further allege that the Watermaster inappropriately
12 named each Trust's respective individual beneficiaries, who allegedly have no present interest in
13 the Property or the groundwater rights associated therewith. (Oppo. at Section III.)

14 As a preliminary matter, the Watermaster named each of the individual beneficiaries of the
15 Tapia Trusts because counsel for Tapia had represented in writing on multiple occasions that the
16 assets of one or both of the Trusts had been distributed to their respective beneficiaries. However,
17 based the declarations attached to the Tapia Trusts' Opposition, the Watermaster is satisfied that
18 the assets of the Trusts—namely the Property and any claims to groundwater associated
19 therewith—have not been distributed to the beneficiaries and remain vested in the names of the
20 Trusts. As such, the Watermaster no longer seeks any relief, whether monetary, declaratory,
21 injunctive or otherwise, against any of the individually named beneficiaries in the Motion: Primo
22 Tapia, Charles Tapia, George Tapia, Steven Tapia, Thomas Tapia and Felix Tapia.

23 As to the liability of the Trusts that own the Property, the Tapia Trusts have completely
24 missed the point and ignore the plain terms of the Judgment. C&N Trust is explicitly named in
25 Paragraph 3(e) of the Judgment as having "no right to pump groundwater from the Antelope
26 Valley Adjudication Area except under the terms of the Physical Solution." Moreover, the Court's
27 Statement of Decision dated December 23, 2015, makes clear that C&N Trust has "failed to
28 establish rights to groundwater pumping based on the evidence and there is no statutory or

1 equitable basis to give [C&N Trust] an allocation of water under the physical solution” with
2 respect to the Property. (Statement of Decision, 14:2-4.) The Court’s determination as to the C&N
3 Trust’s lack of rights to produce groundwater in the Basin is based upon the C&N Trust’s
4 ownership interest in the Property and its claim to the water rights associated therewith.

5 “All real property owned by the parties within the Basin is subject to [the] Judgment.”
6 (Judgment at p. 3, line 25.) Because the Tapia Trusts are collectively the owners of record of the
7 Property, the Tapia Trusts are jointly and severally liable under the Judgment for any delinquent
8 RWAs, interest thereon, and attorneys’ fees associated with groundwater production on the
9 Property.

10 As to Tapia Bros., Inc., if the Court determines that the Tapia Trusts are not liable for the
11 relief requested in the Watermaster’s Motion, or that the Tapia Trusts are only partly liable, the
12 Watermaster requests that the Court grant leave to amend the Motion to name Tapia Bros., Inc.
13 and to seek the same relief against that entity. Although, as discussed below, the settlement
14 negotiations between the Watermaster and the Tapia Parties are irrelevant to the instant Motion
15 and should be disregarded by the Court, it should be noted that at least twice counsel for the Tapia
16 Parties indicated to the Watermaster General Counsel during such negotiations that inclusion of
17 Tapia Bros., Inc. in this dispute would be inappropriate, and that only the landowner Tapia Trusts
18 should be included in any stipulation for settlement. (*See* Oppo. Exh. 10 (email from Watermaster
19 General Counsel attaching a revised draft Stipulation including “Tapia Bros., Inc., a California
20 corporation” as a named party; *see also* Oppo. Exh. 13 (email from counsel for Tapia Parties in
21 response to said revised draft Stipulation, stating in part, “I don’t see why the Tapis [sic] Bros.
22 corporation is included. It seems to me that only the landowners will be included”); *see also*
23 Oppo. Exh. 15 (email from counsel for Tapia Parties in response to Watermaster General Counsel
24 request to keep Tapia Bros., Inc. in draft stipulation, stating in part, “I still do not understand the
25 Tapia Bros. issue as they own no land in the Antelope Valley. Just another weird inclusion in the
26 Small Pumper Class.”).) In short, counsel for the Tapia Trusts has repeatedly insisted that Tapia
27 Bros., Inc. was not a proper party to the Motion, and now in their Opposition to the Motion the
28 Tapia Trusts are pointing to the corporation—rather than the landowner Trusts—as the sole party

1 responsible for payment of RWAs. The Tapia Trusts cannot accuse the Watermaster of engaging
2 in “bait and switch” negotiation tactics (Oppo. at Section VIII) while at the same time leading the
3 Watermaster down alternative paths of liability in order to suit their own interests.

4 Finally, the Tapia Trusts complain that the Watermaster has named the Trustees of the
5 Tapia Trusts in the Motion, and argue that where real property at issue in litigation is owned by a
6 trust, the trustee is only liable if the trustee is personally at fault. The Watermaster is not seeking
7 personal liability against any of the Trustees of the Tapia Trusts. A trust, in and of itself, cannot
8 be a named party to a lawsuit, and therefore the Watermaster correctly named the Trustees of the
9 Tapia Trusts as parties to the Motion.

10 **IV. Declaratory and Injunctive Relief is Warranted**

11 The Tapia Trusts allege that no pumping is currently occurring on the Property, and has
12 not occurred since 2019. Regardless of whether the Tapia Trusts allege to produce any water on
13 the Property currently or in the future, the fact remains that they are out of compliance with the
14 Judgment unless they pay all delinquent RWAs and interest thereon. Until that time, the Judgment
15 authorizes the Watermaster to seek Court intervention to compel compliance and an injunction to
16 prevent further Production until the Tapia Trusts’ Replacement Obligations are fully satisfied.
17 (See Judgment at ¶ 18.4.12; R&Rs § 19.b.i.) Injunctive and declaratory relief is clearly necessary
18 and warranted in this case.

19 **V. The Watermaster is Entitled to Collect the Interest and Attorneys’ Fees Requested**

20 In their Opposition, the Tapia Trusts argue that the Watermaster is not authorized to
21 collect interest on the delinquent RWAs at the rate stated in the Motion, or to recover attorneys’
22 fees incurred in collection thereof. The Tapia Parties are Parties to the Judgment, and are bound
23 by its terms. Paragraph 18.4.12 of Exhibit A of the Judgment and Section 19.g of the
24 Watermaster’s Court-approved Rules and Regulations explicitly authorize: (1) collection of
25 interest on delinquent RWAs at the applicable real property tax delinquency rate for the county of
26 the property in question, and (2) recovery of attorneys’ fees incurred in collection thereof. This
27 provision of the Judgment cannot be challenged by the Tapia Parties six years after entry of
28 Judgment, and the Watermaster has correctly applied these provisions to the case at hand.

1 **A. *The Judgment Allows for Interest at the “Real Property Tax Delinquency Rate”***

2 Paragraph 18.4.12 of the Judgment states as follows: “Any assessment which becomes
3 delinquent, as defined by rules and regulations promulgated by the Watermaster shall bear interest
4 at the then current real property tax delinquency rate for the county in which the property of the
5 delinquent Party is located.” (Emphasis added.) The Tapia Trusts contend that this means a
6 “simple interest rate” for delinquent property taxes in the applicable county, Kern in this case.
7 However Tapia fails to identify what that interest rate may be, perhaps because it does not exist.
8 Delinquent real property taxes in Kern County do not accrue “interest,” but rather “penalties” are
9 imposed in the amount of: (1) 10% of the tax owed if the first installment is not paid by the
10 deadline; (2) 10% of the tax amount owed if the second installment is not paid by the deadline;
11 and (3) 1.5% of the tax amount owed per month, plus a \$15 redemption fee, beginning 12 months
12 following the first property tax installment due date.¹ Because there is no “interest” rate for
13 delinquent real property taxes, the language in the Judgment makes the applicable interest rate the
14 “real property tax delinquency rate” (emphasis added), which is exactly what the Watermaster has
15 used for the purposes of calculating the interest due on the Tapia Trusts’ delinquent RWAs. If the
16 Tapia Trusts can point to an alternative rate of interest for delinquent real property taxes in Kern
17 County that would apply under the plain terms of the Judgment, they are welcome to provide that
18 information for consideration by the Watermaster and the Court. Absent any such evidence or
19 authority, the only plausible interpretation of the Judgment is that the real property tax penalties
20 (*i.e.*, “delinquency rate”) imposed by the Kern County Assessor’s Office shall dictate the interest
21 due on delinquent RWAs associated with real property located in that county.

22 **B. *The Judgment Provides for Recovery of Attorneys’ Fees***

23 The Tapia Trusts further argue that the Judgment does not provide legal authority for
24 collection of the Watermaster’s attorneys’ fees incurred in collection of delinquent RWAs,
25 whether by statute, contract, or law.

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¹ <https://www.kcttc.co.kern.ca.us/index.cfm?fuseaction=kcttcinternet.showAvoidPenalties>

1 Paragraph 18.4.12 of the Judgment states that delinquent assessments, “together with
2 interest thereon, costs of suit, attorneys fees and reasonable costs of collection, may be collected
3 pursuant to” any lawful proceeding as may be instituted by the Watermaster or the Court.
4 (Emphasis added.) The Judgment was entered on December 15, 2015, and is now final. The time
5 for the Tapia Trusts to appeal the attorneys’ fees provision in the Judgment has long past, and
6 neither the Tapia Trusts nor the Court may alter these terms. For the Court to agree with Tapia
7 and deny the Watermaster’s request for attorneys’ fees under the clear terms of the Judgment—
8 *i.e.*, in an enforcement action to collect delinquent RWAs pursuant to Paragraph 18.4.12—would
9 constitute an impermissible amendment to the Judgment. The Watermaster must be awarded its
10 attorneys’ fees on this basis alone.

11 Even assuming, *arguendo*, that Paragraph 18.4.12 of the Judgment does not provide a
12 valid basis for the Watermaster to recover its attorneys’ fees in this case (and other similarly
13 situated actions to collect delinquent RWAs), attorneys’ fees are recoverable as costs when
14 authorized by “law.” (CCP § 1033.5(a)(10)(C).) Fees authorized by law include fees awarded
15 under the “substantial benefit doctrine,” which grants the court equitable power to order recovery
16 of attorneys’ fees where three elements are met: (1) plaintiff has sued in a representative capacity
17 on behalf of others; (2) plaintiff’s efforts have created a substantial pecuniary or nonpecuniary
18 benefit to members of an ascertainable class; and (3) the court’s jurisdiction over the subject
19 matter makes possible an award that spreads the cost proportionately among the members of the
20 benefited class. (*Ciani v. San Diego Tr. & Sav. Bank* (1994) 25 Cal. App. 4th 563, 578.)

21 Here, all three elements of the substantial benefit doctrine are met: (1) the Watermaster is
22 a creation of the Court, tasked with enforcing the terms of the Judgment on behalf of all Parties
23 and users of groundwater within the Basin, which includes the vital task of collecting RWAs to
24 pay for the costs of replacing water used by any Party in excess of their Production Right, thereby
25 preventing long-term harm to the Basin; (2) the Watermaster’s efforts to collect RWAs in this and
26 in other cases creates a substantial benefit to the Parties to the Judgment and all current and future
27 users of groundwater in the Basin by collecting the funds necessary to protect this vital resource
28 for future use; and (3) the Judgment is designed specifically so that collection of RWAs goes

1 directly towards the purchase of Replacement Water to replenish the Basin when a Party such as
2 the Tapia Trusts uses in excess of what they have been allocated, which inherently spreads the
3 benefits of the collected RWAs proportionately among all Parties to the Judgment.

4 When the Judgment was entered, the Court recognized that any action by the Watermaster
5 to collect RWAs would not be for the benefit of the Watermaster, but rather for the benefit of all
6 the groundwater users in the Basin, and therefore provided under Paragraph 18.4.12 that the
7 Watermaster should be entitled to collect its fees incurred in any such action. These essential
8 terms of the final Judgment should not be disturbed.

9 **VII. All References to Settlement Negotiations Are Irrelevant and Should be Ignored**

10 The confidential settlement discussions between the Watermaster General Counsel and
11 counsel for the Tapia Parties set forth in the Opposition at page 4 line 1 through page 7 line 22,
12 and in Exhibits 8 through 20 attached thereto, are not properly before this Court and should not be
13 considered in ruling on the Motion.


14 **VIII. Conclusion**

15 For the reasons set forth above, the Watermaster respectfully requests that Judgment be
16 entered in favor of the Watermaster and against the Tapia Trusts, as set forth in the Motion.

18 Respectfully submitted,

19 Dated: December 3, 2021

PRICE, POSTEL & PARMA LLP

21 By: 
22 CRAIG A. PARTON
23 TIMOTHY E. METZINGER
24 CAMERON GOODMAN
25 Attorneys for
26 Antelope Valley Watermaster

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PROOF OF SERVICE


STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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

On December 3, 2021, I served the foregoing document described **WATERMASTER'S REPLY TO TAPIA'S OPPOSITION TO FIRST AMENDED MOTION FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF** on all interested parties in this action by placing the original and/or true copy.

- BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara County Superior Court Website @ www.scefilng.org and Glotrans website in the action of the Antelope Valley Groundwater Cases.
- (*STATE*) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (*FEDERAL*) I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on December 3, 2021, at Santa Barbara, California.



 Signature
 Elizabeth Wright