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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

CENTRAL DISTRICT

COORDINATION PROCEEDING SPECIAL TITLE (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

INCLUDED ACTIONS:

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 v. DIAMOND FARMING COMPANY, et al., Los Angeles Superior Court Case No. BC325201

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 v. DIAMOND FARMING COMPANY, et al., Kern County Superior Court Case No. S-1500-CV-254348

DIAMOND FARMING COMPANY, and W.M.

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

CASE NO. 1-05-CV-049053
Action Filed: October 26, 2005

SUPPLEMENTAL BRIEF IN OPPOSITION TO PURVEYORS' MOTION FOR RAMPDOWN PRODUCTION RIGHTS AND CARRYOVER OF UNUSED FEDERAL RESERVE RIGHTS

Date: January 31, 2018
Time: 9:00 a.m.
Dept: Room 222

BOLTHOUSE FARMS, INC., v. CITY OF LANCASTER, et al.,
Riverside Superior Court Case No. RIC 344436 [c/w case no. RIC 344668 and 353840]

AND RELATED ACTIONS.

I.

THE JUDGMENT AND PHYSICAL SOLUTION DO NOT GIVE THE PURVEYOR PARTIES PRE-RAMPDOWN PRODUCTION RIGHTS AND CARRYOVER RIGHTS BECAUSE THE PARTIES DID NOT AGREE TO GIVE THEM THESE RIGHTS

The Judgment and Physical Solution ("Judgment") was negotiated and drafted by very capable attorneys on behalf of many sophisticated parties, over a three year period. This negotiation and drafting began in February of 2012. Numerous versions of the Agreement intertwined with e-mails, telephone calls, exchange of information and numerous redline drafts and personal meetings including party representatives continued from then until the Agreement was approved and signed by this Court on December 23, 2015. The purveyors' suggestion that these attorneys and parties failed to include language expressing a claimed purveyor right to produce an additional 40-50,000 acre-feet of water from an over-drafted basin is patently without merit. The first time such rights appear to have been claimed is in August of 2017 to the Watermaster Engineer Phillis Stanin, five and one-half years after the drafting began and over a year and one-half after the Judgment was approved and signed by the Court.

As one might expect with the number of attorneys involved in the negotiation and drafting of the Judgment over a lengthy period of time, all important rights agreed to by the parties are clearly spelled out in the Judgment. The Judgment does not, and should not, contain things that were not agreed. In response to the new water right claims by the purveyors, various parties submitted written objections to the Advisory Committee which ultimately were provided to the Watermaster Board and Watermaster Attorney. These written comments are attached as Exhibit "4" to the Request for Judicial Notice filed by the City of Los Angeles, Diamond Farming, Bolthouse Properties, LLC and the County Sanitation

District filed on January 18, 2018 in Opposition to District 40 Motion for Pre-Rampdown Production Rights and Carryover incorporated herein by reference.

The purveyors motives are clear and harmful. Under the Judgment, a Producer may carry over any portion of its unused Production Right. (Sect. 15.) However, the Pre-Rampdown Production Rights on Exhibit 4 to the Judgment over and above a Production Right cannot be carried over. Thus, the purveyors seek to first create a Pre-Rampdown Production Right of more than 28,000 AF (40,500-12,345 = 28,155) in excess of their Production Rights. Next the purveyors seek to create the right to carry over the unused portion of the Federal Reserve Right, a right that does not presently exist under the Judgment. Then, the purveyors intend to pump the maximum allowed under their newly created Pre-Rampdown Production Right, and carry-over 100 percent of the unused Federal Reserve Right, while avoiding the payment of Administrative and Replacement Assessments.[1] The Purveyors did not bargain for such right, and the Judgment does not create them.

The purveyors are attempting to gain additional rights not agreed to by the parties using tortured, illogical arguments not supported by the written terms of the Judgment.

II.

THE INDEPENDENT WATERMASTER COUNSEL DETERMINED THAT THE JUDGMENT DOES NOT GIVE THE PURVEYOR PARTIES THE ADDITIONAL WATER RIGHTS CLAIMED

The parties to the Judgment through the Watermaster Board jointly agreed to retain attorney Craig Parton as the Watermaster attorney to address issues such as the current claim by the purveyors that they are entitled to Pre-Rampdown Production Rights production

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[1] By example, District 40 has an annual water demand of about 45,000 afy. Under section 8.4.1, District 40 must buy at least 70 percent of that demand or 31,500 afy from AVEK, leaving a difference of 13,500 afy. District 40's Exhibit 3 Production Right is 6,789 afy, and in 2015, District 40's portion of the unused Federal Reserve was 3,652. Thus, District 40 need only produce another 3,089 afy from Imported Water Return Flows to meet demand. District 40 is proposing that the Court award it a Pre-Rampdown Production Right based on the average of its 2010/2011 pumping of about 18,601 afy. Thus, while the landowners in the Basin have to cut water use by more than 50 percent, District 40 would have surplus water supplies of about 8,190 afy and District 40 could carry-over 100 percent of the unused Federal Reserve Right and its Imported Water Return Flows.

rights and carryover of the unused Federal Reserved Water Rights. Mr. Parton issued written Opinions of his findings, copies of which are attached as Exhibit "5" to the Request for Judicial Notice filed by the City of Los Angeles, Diamond Farming, Bolthouse Properties, LLC and the County Sanitation District filed on January 18, 2018 in Opposition to District 40 Motion for Pre-Rampdown Production Rights and Carryover incorporated herein by reference.

The opinions of Watermaster Counsel accurately frame and analyze the issues and are hereby adopted and incorporated herein by reference. This analysis concludes that the Judgment does not provide the purveyors with the rights they are claiming.

Highlights of the analysis and opinions include the following:

Regarding the carryover issue, the Watermaster Attorney stated:

A. Introduction And Background

> As an example of that 'give and take,' those with Overlying Production Rights (3.5.26) agreed to substantial reductions in their current and historical production. In order to lessen the effects of these 'severe reductions' in current and historical use, those with Overlying Production Rights (3.5.26) obtained the benefits of a Rampdown
> [Watermaster Opinion Re Carry Over Water Rights Under the Judgment and Physical Solution dated December 4, 2017 pg. 2]

B. Classes Of Types Of Water Rights Yo Which Carryover Rights Attach Under The Judgment

> This definition identifies two classes or types of water rights to which Carry Over attaches under the terms of the Judgment: (1) Production Rights (defined in 3.5.32); and (2) Imported Water Return Flows (defined in 3.5.16). Section 15,1 then includes the additional and third corollary class or type of Groundwater right entitled to Carry Over—namely In Lieu Production. The definition does not mention any other Groundwater right from which Carry Over may attach.
> [Watermaster Opinion Re Carry Over Water Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 4]
>
> When a material term is omitted from an integrated agreement that covers the subject at issue, the Court may not admit evidence of a contradictory material term in a prior agreement or in a contemporaneous oral agreement (Code of Civil Procedure 1856

(a)). Here, while one may argue that the additional rights to Carry Over being advocated by some do not 'contradict' the Judgment, they fundamentally change the nature of the bargain and the presumably delicate balance achieved amongst highly adversarial parties that resulted in a Stipulation for the Entry of Judgment In addition, an interpretation of an agreement is to be employed which makes that agreement 'lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intentions of the parties' (Civil Code 1643). Here the intentions of the Parties are clear from the language of the Judgment. The Judgment is certainly operative and is also capable of being carried into effect by the conclusion that Carry Over was only to apply to the unproduced or unused portion of a Party's Production Right or Right to Imported Water Return Flows.... [Watermaster Opinion Re Carry Over Water Rights Under the Judgment and Physical Solution dated December 4, 2017 pp. 4-5]

C. Parties Not Entitled To Carryover Water

As noted, Sections 15.1, 15.2 and 15.3 identify three classes or types of water rights that are eligible for Carry Over under the Judgment and Physical Solution. Those sections then identify the specific Parties eligible to exercise Carry Over rights—namely those Parties with Non-Overlying Production Rights and identified in Exhibit 3, those Parties with Overlying Production Rights and identified in Exhibit 4, and the State of California. [Watermaster Opinion Re Carry Over Water Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 5]

D. The Draught Program Provides The Public Water Suppliers With Additional Flexibiltiy During The Rampdown Period

In exchange, these Producers are not subject to the Replacement Water Assessments as long as they each have 'utilized all water supplies available to it including its Production Right to Native Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water Rights, Imported Water, and Production rights previously transferred from another party.' (8.4.2). No mention is made of 'Pre-Rampdown Production' rights in that list of the various water rights available to the Public Water Suppliers identified on Exhibit 3 (see separate Memorandum on Pre-Rampdown Production Rights under the Judgment and Physical Solution, dated December 4, 2017). [Watermaster Opinion Re Carry Over Water Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 7]

D. Carry Over And The Potential Impact On Overdraft

> This result would arguably negatively impact Groundwater sustainability in the Basin and is counter to the Court's strongly stated concern in the Statement of Decision about the importance of additional Imported Water coming into the Basin which allows additional Imported Water Return Flows to help restore Groundwater levels and facilitates Production within the Native Safe Yield.

F. Conclusion

> This landmark litigation did not lack for forceful advocates and experienced water lawyers. To now amend an otherwise operative Judgment is both legally unsupportable and an act clearly outside the jurisdictional authority of the Watermaster. Counsel on all sides had ample (and obvious) opportunities to amend the language of the Judgment that was ultimately entered to make clear what they now argue for—that Carry Over applies to the unproduced portion in excess of a Party's Production Right or Right to Imported Water Return Flows but less than their Pre-Rampdown Production right.

Regarding the purveyor claim to Pre-Rampdown Prodution Rights the Watermaster stated:

A. Introduction & Background

> The history of this case spans over 15 years of litigation and involved extensive negotiations, thousands of Parties, and four phases of trial.
>
> Not surprisingly, the Judgment and Physical Solution reflect negotiating trade-offs amongst the Parties. For example, the Public Water Suppliers obtained an entitlement to the unproduced portion of the Federal Reserved Water Right' and a substantial portion of the Imported Water Return Flows, as well as rights and duties under the Drought Program and presumably a substantial portion of the benefit from the In Lieu Production Right Carry Over. On the other hand, those Parties with Overlying Production Rights identified in Exhibit 4 of the Judgment stipulated to what the Court characterized as 'severe reductions' in their Production Rights in exchange in part for obtaining 'Pre-Rampdown Production' rights during the so-called 'Rampdown Period' discussed in the 'Judgment.'
> [Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 pp. 1-2]

B. Legal Analysis

...

Initially we note that Judgment is emphatic that '[t]he Physical Solution requires **quantifying** the Producers' rights within the Basin in a manner which will reasonably allocate the Native Safe Yield and Imported Water Return Flows and which will provide for sharing Imported Water costs.' (30:3-6, *emphasis added.)* [Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 4]

C. Overlying And Non-Overlying Production Rights

Overlying Production Rights are defined in Section 3.5.26 of the Judgment as follows: "The rights held by the Parties identified in Exhibit 4, attached hereto and incorporated herein by reference."

Section 5.1.1 then later states that '[t]he Parties listed in Exhibit 4, attached hereto and incorporated herein by reference, have Overlying Production Rights. Exhibit 4 sets forth the following for each Overlying Production Right: (1) the Pre-Rampdown Production; (2) the Production Right; and (3) the percentage of the Production from the Adjusted Native Safe Yield.' Exhibit 4 lists those with Overlying Production Rights and specifically includes the 'Pre-Rampdown Production' component as identified in Section 5.1.1.

Non-Overlying Production Rights are defined in Section 3.5.21 as follows: 'The rights held by the Parties identified in Exhibit 3, attached hereto and incorporated herein by reference.'

Section 5.1.6 then later states as to Non-Overlying Production Rights that '[t]he Parties listed in Exhibit 3 have Production Rights in the amounts listed in Exhibit 3. Exhibit 3 is attached hereto and incorporated herein by reference. Non-Overlying Production Rights are subject to the Pro Rata Reduction or Increase only pursuant to Paragraph 18.5,10.' *(Emphasis added.)* Exhibit 3 has no calculation for Pre-Rampdown Production for those Parties identified in Exhibit 3 nor does Section 5.1.6 list that right as a component of a Party's Non-Overlying Production Right. There is no mention of Pre-Rampdown Production rights in Exhibit 3 nor are such rights quantified for Non-Overlying Producers (or anyone else for that matter) anywhere in the Judgment other than in Exhibit 4.

In addition, Section 5.1.4.1 addressing Federal Reserved Water Rights states that the Production of the unused portion of this Federal right 'does not increase any Non-Overlying Production Right holder's decreed Non-Overlying Production Right amount or percentage....' It once again appears clear that the 'amount' and

'percentage' of the Non-Overlying Production Right was intended to be spelled out in full in Exhibit 3 and once again there is no mention of Pre-Rampdown Production rights being a component part of Non-Overlying Production Rights.

[Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 pp. 4-5]

D. Production During Rampdown Period

...

The reduction of Production during the Rampdown Period is described in Section 8.3 as follows: **'Reduction of Production during Rampdown** . During the first two Years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each Party **may** Produce from the Native Safe Yield will be progressively reduced, **as necessary**, in equal annual increments, from its Pre-Rampdown Production to its Production Right. *(Emphasis included in the source document.)*

Section 8.3 applies only to Producers with Pre-Rampdown Production rights in excess of their Production Rights. It is inapplicable if a Party has no Pre-Rampdown Production right reflected in the Judgment, in which case that Party's Production Right is in fact their Pre-Rampdown Production right. In that case, it is not necessary to reduce Pre-Rampdown Production because it is already the Production Right, by definition.
[Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 6]

E. Any Interpretation Of Section 8.3 Must Be Consistent With Other Relevant Provisions In The Judgment

The Public Water Suppliers argue that Section 8.3 is clear: Each Party that is entitled to Produce from the Native Safe Yield is thereby also entitled to a Pre-Rampdown Production calculation as outlined in section 3.5.28 (i.e., reasonable and beneficial use of Groundwater before the date of entry of the Judgment, excluding Imported Water Return Flows, or their Production Right, whichever is greater). Since the Public Water Suppliers are Parties entitled to Produce from the Native Safe Yield, the argument is that the Public Water Suppliers are clearly identified as Parties covered by Section 3.5.28 and entitled to Pre-Rampdown Production based on their reasonable and beneficial use of Groundwater before entry of the Judgment. All agree that the Judgment does not quantify a Pre-Rampdown Production amount for those Parties with Non-Overlying Production Rights who are identified in Exhibit 3.6

As noted, this interpretation fails to recognize the importance of the words **'may'** and 'as necessary' in Section 8.3, the explicit language of Sections 5.1.1 and 5.1.6, and the fact that the Judgment does not explicitly state that Non-Overlying Producers have Pre-Rampdown Production rights in excess of their Production Rights (and in fact, Section 5.1.6 limits Non-Overlying Production Rights to the **amounts** of Production Rights **quantified** on Exhibit 3).

Interpretations of Judgments must give force and effect to the language of the entire agreement (Civil Code 1641) and must be interpreted in a way consistent with other provisions in the same agreement. Section 8.3 can just as easily be read as emphasizing that those Parties who Produce from the Native Safe Yield **and who have Pre-Rampdown Production rights in excess of their Production Rights,** will be progressively reduced as necessary in equal annual increments from the Pre-Rampdown Production right to its Production Right. This would be consistent with the fact that the definition of Non-Overlying Production Rights is silent about whether those particular Parties have a Pre-Rampdown Production right and Exhibit 3 makes no mention (as does Exhibit 4) of any entitlement to, let alone calculation of, a Pre-Rampdown Production right.

[Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 7]

F. Assuming For The Sake Of Argument That Parties In Addition To Those Identified In Exhibit 4 Are Entitled To A Pre-Rampdown Production Right, A Consistently Applied Methodology For Calculating These Amounts Is Not Present In The Judgment

Furthermore, even assuming such a consistently applied methodology can be derived from the values for Pre-Rampdown Production found in Exhibit 4 or elsewhere in the Judgment, it must also be assumed that those identified in Exhibit 4 stipulated or otherwise accepted a Judgment that cemented their historical amounts for the entire Rampdown Period but allowed all other Parties entitled to Pre-Rampdown Production the benefit of establishing both the methodology and the amounts at an unspecified future date. This assumption is not consistent with the detailed and careful approach to managing sustainability in the Basin reflected in the Judgment. Furthermore, no provision of the Judgment authorizes the Watermaster Engineer to compute these historical amounts. (emphasis added.)

[Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 pp. 8-9]

G. Conclusion

> It is contrary to the intention of the Judgment to assume that a hydrologically significant amount of Pre-Rampdown Production rights were left to future resolution for those Parties identified in Exhibit 3 (and for arguably all other classes of right holders who may argue for Pre-Rampdown Production rights), but were specifically called out, calculated, and agreed to for Parties identified in Exhibit 4. (emphasis added.)
>
> If there was confusion over the impact of Imported Water Return Flows on the calculation of Pre-Rampdown Production rights for those Parties identified in Exhibit 3, the Judgment could have easily and obviously noted that this calculation would be done in the future. The Judgment does not do so (emphasis added.) [Watermaster Opinion Re Pre-Rampdown Production Rights Under the Judgment and Physical Solution dated December 4, 2017 p. 10]

III.

THE PURVEYOR CLAIMS THAT THE LANDOWNERS AGREED THAT THE PURVEYORS HAVE PRE-RAMPDOWN PRODUCTION RIGHTS AND RIGHTS TO CARRY OVER UNUSED PORTIONS OF THE FEDERAL RESERVED RIGHT ARE INACCURATE

A. The Landowners Did Not Agree To The Model Information And Opinions Of Dr. Williams Other Than To Illustrate That A Model Can Be A Helpful Tool To Manage The Basin:

The purveyors claim that the landowners agreed to the modeling information and opinions of Dr. Williams. This representation is inaccurate.

The purveyors requested as a part of the Judgment that the landowners agree to some unspecified, unvetted and non-peer reviewed model information conducted by Dr. Dennis Williams without any input from the landowners or any of their experts. The landowners refused. That is why the Judgment and Physical Solution contain neither modeling information nor any reliance on any modeling information, work or opinions of Dr. Williams who was retained solely by the purveyor parties.

Following agreement to the Judgment and before trial requesting this Court approve the Judgment, the purveyors again requested that the landowners agree to use Dr. Williams' unvetted and non-peer reviewed model information as a basis for the last phase of trial to

obtain the court's approval of the Judgment. Again, the landowners refused to agree. The landowners expressed their concern that there might be some attempt to use this unvetted and non-peer reviewed information and opinions of Dr. Williams at some point in the future. The landowners advised the purveyors they would object to any attempt to use Dr. William's information and opinions other than to show that a model could be helpful to managing the basin but without agreeing to the accuracy or application of any of Dr. Williams information and opinions. The purveyors ultimately agreed.

Based upon this agreement, at trial on September 29, 2015, counsel for Bolthouse advised the court that the landowners did not agree with the information and opinions of Dr. Williams except to show that a model may at some point in the future be helpful to management of the groundwater basin. The landowners clarified that this information would not be admitted into evidence and reserved all rights to object to the information at a later time. (See Reporter's transcript from September 29, 2015 attached as Exhibit A to the Declaration of Richard G. Zimmer in support hereof. A pertinent portion of this discussion is set forth below:

> Mr. Zimmer: Yes, your Honor. Your Honor, at the end of the day yesterday, there were some comments between Mr. Dunn and Mr. Brunick that related to the testimony of Dr. Williams. And so I think it's a good idea that the court at least understands what that's about so we don't end up in objections while Dr. Williams is testifying. As the Court knows, **all the parties that have stipulated are reserving their objections across the board inter se**. This – this case has been going on since 2000 and I don't think I could count the number of times that we have discussed settlement throughout that time. To the credit of all the parties that are seated in this room, a settlement has been reached which reduces, through a lot of pain and very hard fought negotiations, reduces the overall pumping to below or at what the court determined the safe yield to be. And it is that global reduction to the safe yield which is at the heart of the Stipulated Judgment and Physical Solution. That, as the Court is – can probably imagine, a lot of the parties had various concerns about how that would all work out. But in a consistent way to what the Court has articulated in the past, that there would be some mechanism set up to manage this basin in the future in conjunction with reduction to the safe yield, that there would be this mechanism to manage the basin, that the basin would then

be protected and that was the basis of the settlement. How that would be done, you can imagine there would be a lot of disagreement as to exactly how that would be done but the procedure certainly is set forth in the stipulated judgment.

The County has done some additional work in working on a model that talks about various scenarios about what – how the Physical Solution could benefit the basin. **The – the parties, land owners have not all agreed to the model as the way to do that in the future as the management tool,** but all the land owners agree that **a** model can be a very effective tool in the future to do that. The parties, I also think, agree that **the model that's being presented by the County is their view of how this Physical Solution will benefit the basin** and none of the land owner parties are objecting to that beyond **reserving the rights to challenge** a model, if necessary in the future, **to have contribution to a model** in the future, which will be used **to have a model in the future vetted for purposes of ultimate – which will be the ultimate model that's used.**

So putting that aside, Mr. Dunn and I have talked about this briefly and there may be some differences in phraseology but what has been agreed is Dr. Williams' testimony **will not be objected to by the land owners for expediency**, and because those rights are reserved the parties have agreed that **this presentation of this Physical Solution is for the purpose of showing how a model could help** the basin under tis overall management process of reducing the safe yield than having a procedure in place in the future to work out the details, which obviously as the court has expressed many times would be **influx (sic) and will have to be dealt with in the future**. So they've agreed that that's what the purpose is. It's not for purposes of management, it's not for purposes of selecting a water master. **The model will not be introduced in evidence and the slides will not be introduced into evidence,** but will be used for demonstrative purposes only as to understanding Dr. Williams' testimony.

. . .

Mr. Zimmer: Your Honor, just to briefly respond to Ms. Ailin's point and also to Mr. Kalfayan's, to a certain extent. The testimony is not being introduced, as I understand it, Mr. Dunn could highlight this, to show that's exactly how it will happen in the future, so I think some of these comments about how exactly they will be impacted would be premature.

The Court: **Do I understand correctly this is a hypothetical example? Is that what the model is?**

Mr. Dunn: And I appreciate Mr. Zimmer's comments and concur....

B. The Modeling Information And Opinions That Dr. Williams Presented At Trial Post-Date Agreement To The Judgment And Are Irrelevant To What The Parties Agreed:

The agreement to the Judgment was entered into before the last phase of trial when the court approved the Judgment. As such, the claim that the landowners agreed with Dr William's information and opinions is irrelevant to show the landowners' intent at the time of agreement to the Judgment. Had the landowners agreed that the Williams' information and opinions were accurate and foundational to the Judgment, the information and opinions would have been included in the Judgment.

Even if the information was relevant, the transcript quoted above makes clear that the landowners did not agree with this information and did not jointly profer the information as represented by the purveyor attorneys in their Motion.

C. The Williams Information And Opinions Are Parol Evidence Improperly Used In An Attempt To Create New Rights Which Are Clearly Not Provided In The Judgment:

The purveyors attempt to create water rights not provided by the Judgment based upon information and opinions not contained in the Judgment in an attempt to prove the parties agreed to the accuracy of such information and to show the intent of the parties at the time the Judgment was entered into. The Judgment is not ambiguous and therefore parol evidence is improper. The Judgment clearly does not provide the purveyors with production rights above and beyond the Production Rights listed on Exhibit 3.

It is worthy of note that this argument was not made to the Watermaster Attorney. The argument was presented for the first time- after the Watermaster Attorney Opinion was Issued as a desperate attempt to create new rights for the purveyor parties where no such rights were agreed. The landowner parties severely cut their production of groundwater by varying amounts by negotiation between the landowners and incorporated into the Judgment. In some cases they cut past production by more than 50% to reach an agreement. All landowners took substantial cuts.

The Pre-Rampdown Production Rights of the landowner parties specifically set forth in the Judgment were meant to provide the landowners time to implement these cutbacks by

ramping down their production gradually. If the purveyors believed they would need a rampdown period they clearly would have requested that and if agreed it would likewise have been incorporated into the Judgment. No such accommodation is provided for them in the Judgment as it is for the landowners in Exhibit 4 which sets forth the landowner production rights, specifically including Pre-Rampdown Production Rights. By contrast, Exhibit 3 which sets forth the purveyor production rights, does not include any Pre-Rampdown Production Rights nor any indication that such rights could be considered in the future. Also conspicuously lacking is any mechanism to determine the quantity of such claimed rights which would be necessary to enforce such rights in the future.

The purveyor right to use a portion of the unused Federal Reserved Rights was only agreed to under very limited circumstances and no right to carryover is provided by the Judgment. The parties entered into a very carefully and heavily negotiated Judgment to conform supply with demand. No party is entitled years later to claim new and additional rights not specifically set forth in the Judgment.

D. The Purveyors' Claim Under Section 8.3 For A Pre-Rampdown Right In Excess Of Their Production Right Conflicts With The Emergency Drought Provisions In Section 8.4 Of The Judgment:

The emergency Drought Program contained in Section 8.4 of the Judgment provides eight purveyors with the right to pump water in excess of the Native Safe Yield during the Rampdown Period and without payment of a Replacement Water Assessment under certain enumerated conditions. First, during the Rampdown Period District 40 must purchase 70 percent of its total annual demand from AVEK. (Sect. 8.4.1.) Second, and more importantly, before any Drought Program Participant produces water under the Drought Program, such participant must exhaust all other available supplies of water. (Sect. 8.4.2.) Section 8.4.2 provides:

> During the Rampdown period, no Production by a Drought Program Participant shall be considered excess Groundwater Production exempt from a Replacement Water Assessment under this Drought Program unless a Drought Program Participant has utilized all water supplies available to it including its Production Right to Native Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water

Rights, Imported Water, and Production rights previously transferred from another party.

Strikingly absent from this list of available supplies that must be exhausted is any mention of a purveyor Pre-Rampdown Production Right. The purveyors did not bargain for such a right, and the Judgment does not provide such a right. Had the parties intended to provide such a right, it would have been included in the list of available supplies that needed to be fully utilized before pumping under the Drought Program.

DATED: January 18, 2018

CLIFFORD & BROWN

By _____
RICHARD G. ZIMMER, ESQ.
Attorneys for BOLTHOUSE PROPERTIES, LLC and WM. BOLTHOUSE FARMS, INC.

DATED: January 18, 2018

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Attorneys for TEJON RANCHCORP and GRANITE CONSTRUCTION COMPANY

DATED: January 18, 2018

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