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10 PAMELLA ZAMRZLA, JOHNNY LEE  
11 ZAMRZLA and JEANETTE ZAMRZLA  
12 (collectively “ZAMRZLAS”)

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

15 Coordinated Proceeding,  
16 Special Title (Rule 1550(b))

17 ANTELOPE VALLEY  
18 GROUNDWATER CASES.

Judicial Council Coordination  
Proceeding No.: 4408

LASC Case No. BC325201

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

**ZAMRZLAS’ BRIEF RE MARCH 15-16  
EVIDENTIARY HEARING**

19  
20  
21 The Settling Parties and Watermaster have vigorously opposed the Zamrzlas every step of  
22 the way, forcing lengthy and costly litigation, multiple hearings, and many hours of depositions.  
23 Nonetheless, after all of their efforts, they have failed to establish the Zamrzlas were properly  
24 served with notice of the Antelope Valley Groundwater litigation. Further, the Settling Parties and  
25 Watermaster must now concede, based on the evidence before this Court already, and additional  
26 evidence that will be introduced at this hearing, that the Zamrzlas are not Small Pumpers. They  
27 have indisputably pumped in excess of the 25 acre-feet threshold in multiple years in the relevant  
28 timeframe.

1 The Zamrzlas should be given their fair opportunity to litigate their water rights. They will  
2 present to this Court evidence establishing 1) they fall outside the definition of the Small Pumper  
3 Class, 2) that they never received notice of the underlying litigation, and 3) that they acted diligently  
4 to protect their rights once they learned of the litigation and its potential effect on them.

5 **I. The Evidence Establishes the Zamrzlas are Not Small Pumpers**

6 As the Court noted in the December, 2022 hearing there is no dispute that the Zamrzlas are  
7 not Small Pumpers, as the class is defined in the 2015 Judgment. Both Johnny and Pamella, and  
8 Johnny Lee and Jeannette, pumped in excess of the 25 acre-feet threshold prior to the 2015  
9 Judgment.

10 At the last hearing, in December, this Court sought additional evidence as to how the Small  
11 Pumper List was created – i.e. how the Zamrzlas got on that list<sup>1</sup> – and how and when the Zamrzlas  
12 found out about the litigation and their alleged classification as Small Pumpers.

13 The Zamrzlas will offer evidence addressing both issues. With respect to how Johnny and  
14 Pamella Zamrzla got on the Small Pumper List, at the suggestion of the Court, the Zamrzlas  
15 contacted Mr. Mike McLachlan, attorney for the class representative of the Small Pumper Class.  
16 Mr. McLachlan’s declaration [Exhibit 16] outlines how the Small Pumper List was created. In  
17 short, an initial list of potential small pumpers was created by William Leever, Jr. of Wildermuth  
18 Environmental. [See Exhibit 17.] Mr. McLachlan was then personally involved in revisions to that  
19 list. Duplicates were removed, and individuals who were members of mutual water companies  
20 were identified and removed. This led to a “final” list which was thereafter used in the litigation.

21 Interestingly, at the December hearing, counsel for the Settling Parties and Watermaster  
22 represented to this court that Water Code section 5001 extraction notices were used to identify and  
23 remove individuals from the Small Pumper List. However, as clearly stated in Mr. McLachlan’s  
24 declaration, this is not true. Extraction notices were never used as a basis for identifying and  
25 removing individuals from the Small Pumper List.

26 Mr. McLachlan’s declaration further outlines that while he believes the list was fairly  
27 accurate, he understood that inevitably the list would capture some people who did not meet the

28 <sup>1</sup> Johnny Lee and Jeannette Zamrzla are *not* on the Small Pumper Class list.

1 Small Pumper Class definition. It is for this reason that the definition was included as part of the  
2 2015 final judgment, as the definition controls who and who is not a member of the Small Pumper  
3 Class – not the list itself. [See Exhibit 16.]<sup>2</sup>

4 Thus, the entire premise of the Settling Parties and Watermaster’s contention is flawed. The  
5 Zamrzlas are not subject to the judgment as Small Pumpers merely because of their erroneous  
6 inclusion on the list of potential Small Pumpers.

7 Rick Koch of Southern California Edison performed a month by month analysis for each of  
8 the three Zamrzla wells, at times in this litigation labeled the Pasture Well (serving Johnny Lee and  
9 Jeanette’s property), the Domestic Well (serving Johnny and Pamella’s parcel containing their  
10 home), and the Farm Well (serving Johnny and Pamella’s 80 acres of “farm” land connected to the  
11 parcel on which their house sits). The analysis, some of which has been in the possession of Settling  
12 Parties and Watermaster’s possession for *years* and **all of which has been in their possession since**  
13 **at least May 31, 2022**, establishes that all three wells regularly produced in excess of 25 acre-feet  
14 a year. [See Exhibits 1-16.]

15 Further, the Zamrzlas will each testify concerning the uses of their property, and the amount  
16 of water produced from the three wells. Photographs will show regular crops being grown  
17 throughout the years. [See Exhibits 24-36, 46-47.] The Zamrzlas will also present evidence  
18 showing the lease of their land to various farming businesses, who grew crops and pumped far in  
19 excess of 25 acre-feet per year from the “Farm” Well – this includes settling party Grimmway  
20 Enterprises.<sup>3</sup> [See Exhibits 41-45.]

21 **II. The Evidence Establishes the Zamrzlas Did Not Have Notice of the Litigation Prior**  
22 **to the 2015 Judgment**

23 As to the issue of notice, the Settling Parties and Watermaster conflate generalized  
24 knowledge of the existence of litigation with proper notice and due process. They fail to provide

25 \_\_\_\_\_  
26 <sup>2</sup> While the Settling Parties and Watermaster have objected to this exhibit, the Zamrzlas note that the Court itself raised  
27 questions as to how the Zamrzlas ended up on the Small Pumper List, and stated, “... it might be that you have to call  
28 Mr. McLachlin who was counsel for the small pumper class and get his testimony as to how they were included. That  
might be helpful.” The Zamrzlas offer this declaration of Mr. McLachlan in an effort to answer the Court’s questions.

<sup>3</sup> Grimmway has taken the interesting position that the Zamrzlas are Small Pumpers despite its own personal knowledge  
of water use far in excess of the 25 acre-feet threshold. [Exhibits 37-40.]

1 any proof of service or any proof that any mailing was actually sent to Johnny and Pamela Zamrzla.  
2 Further, no party even contends Johnny Lee and Jeannette Zamrzla ever received notice of any  
3 kind.

4 With respect to what the Zamrzlas learned of the litigation and when they learned it, that  
5 evidence is before this Court already [Exhibits 18-20], and the Zamrzlas will testify to the same as  
6 well. Their testimony will establish the following: Johnny Lee Zamrzla was unaware of the  
7 litigation or its effects on his water pumping rights until 2018, when the Zamrzlas were sent a letter  
8 from the Antelope Valley Watermaster’s attorney, claiming they were over-pumping their  
9 allocations. Likewise, Pamela Zamrzla also had no knowledge of the litigation prior to 2018.

10 Johnny Zamrzla, admittedly, was aware that water litigation was going on in the Antelope  
11 Valley, but never understood it to apply to him. As he testified during his deposition, he “thought  
12 it was the big guys.” As outlined below, the Zamrzlas first learned that their water rights were  
13 threatened by the 2015 Judgment in 2018, and they have acted diligently since that time to seek to  
14 protect those rights.

15 **III. The Zamrzlas Have Acted Diligently**

16 Since the discovery that their pumping rights were threatened by the 2015 Judgment, the  
17 Zamrzlas have acted with diligence in attempting to litigate their rights. The Zamrzlas’ efforts to  
18 protect their rights are set forth in the Declaration of Johnny Zamrzla, filed in conjunction with the  
19 Zamrzlas’ Reply Briefs, and Mr. Zamrzlas will testify to the same before this Court.

20 In summary, here, the Zamrzlas first received a letter from the Watermaster on July 16,  
21 2018. In response, they promptly retained Mr. Robert Brumfield, who requested on July 24, 2018  
22 that the Watermaster stipulate to the Zamrzlas being permitted to intervene in the litigation. No  
23 response was received. Mr. Brumfield followed up again on August 6, 2018, again no response  
24 was given to the request.

25 When the Watermaster requested information regarding how much water both sets of  
26 Zamrzlas planned to pump in the future, Mr. Brumfield provided the requested information. Some  
27 time thereafter, the Watermaster began asserting the claim that the Zamrzlas were Small Pumper  
28 Class members, which was the first time the Zamrzlas had heard this allegation or were aware of a

1 Small Pumper Class. On January 22, 2019, the Watermaster invoiced the Zamrzlas for the year  
2 2018 in the amount of \$273,165, based on erroneous information. Communication between the  
3 Watermaster and the Zamrzlas ensued throughout 2019 and 2020. During this time the Zamrzlas  
4 produced evidence regarding their actual water use and attempted to reach some sort of reasonable  
5 settlement with the Watermaster. The Watermaster even sent the Zamrzlas a draft settlement  
6 agreement on April 12, 2021, however the agreement improperly lumped Johnny and Pamella  
7 Zamrzla together with Johnny Lee and Jeanette Zamrzla as if they were one party.

8 On October 28, 2021 the Watermaster moved for monetary, declaratory, and injunctive  
9 relief against the Zamrzlas. This motion was the first time the Watermaster acknowledged its error,  
10 now claiming the Zamrzlas owe only \$28,755 based on their own reported 2018 pumping.  
11 Notwithstanding this admission of error, the invoice for \$273,165 remains publicly posted to the  
12 Watermaster’s website, despite numerous requests that it be withdrawn.

13 The Zamrzlas opposed the Watermaster’s motion. The Watermaster filed a reply brief.  
14 Four hearings were held as to the Watermaster’s claims against us: December 10, 2021, January  
15 25, 2022, February 18, 2022, and March 4, 2022.

16 [Exhibit 19, pages 17-19]

17 As this Court is aware, another hearing was held in December, 2022, which leads us to the  
18 present hearing. The timeline is clear: the Zamrzlas have actively and diligently pursued a  
19 resolution of their water rights since the first day they learned they were allegedly subject to the  
20 2015 Judgment.

21 **IV. Johnny Lee & Jennette Zamrzla are not Unknown Small Pumpers**

22 Having failed to find any viable rationale to claim Johnny Lee and Jeannette are subject to  
23 the Judgment, the Settling Parties and the Watermaster now contend that Johnny Lee and Jeannette  
24 are “Unknown Small Pumpers.” Unknown Small Pumper Class Members are specifically defined  
25 as follows:

26 Unknown Small Pumper Class Members are defined as: (1) those  
27 Persons or entities that are not identified on the list of known Small  
28 Pumper Class Members maintained by class counsel and supervised  
and controlled by the Court as of the Class Closure Date; and (2) any  
unidentified households existing on a Small Pumper Class Member

1 parcel prior to the Class Closure Date. Within ten (10) Court days of  
2 the Class Closure Date, class counsel for the Small Pumper Class  
3 shall publish to the Court website and file with the Court a list of the  
4 known Small Pumper Class Members.

5 [Exhibit 21 – Judgment section 5.1.3.6]

6 The Settling Parties and the Watermaster do not offer any explanation as to how this  
7 definition applies to Johnny Lee and Jeannette – they simply assert that it does. Nonetheless, the  
8 evidence establishes Johnny Lee and Jeannette do not meet the Small Pumper Class definition as  
9 they pumped in excess of 25 acre-feet per year.

10 **V. The Long Valley Road Motion to Intervene Does not Apply to the Zamrzlas**

11 The doctrine of res judicata rests on the ground that a party who has litigated a matter or  
12 had an opportunity to do so should not be permitted to litigate it again to the harassment and  
13 vexation of his or her opponent. Public policy and the interests of litigants alike require that there  
14 be an end to litigation. (*Busick v. Workmen’s Comp. Appeals Bd.* (1972) 7 Cal. 3d 967, 972;  
15 *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1144 [whether applied as total bar to further  
16 litigation or as collateral estoppel, doctrine rests on sound policy of limiting litigation by preventing  
17 party that had one fair adversary hearing on issue from drawing it into controversy again and  
18 subjecting other party to further expense in its reexamination].

19 The rule of res judicata is to prevent vexatious litigation and to require the parties to rest on  
20 one decision in their controversy; res judicata bars not only the reopening of the original  
21 controversy, but also subsequent litigation of all issues that were or could have been raised in the  
22 original suit. (*McFadden v. Los Angeles County Treasurer & Tax Collector* (2019) 34 Cal.App.5th  
23 1072, 1079; *Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 821.)

24 Issue preclusion precludes relitigation of an issue previously adjudicated when the  
25 following requirements are satisfied:

- 26 • The issue sought to be precluded must be identical to that decided in a prior proceeding;
- 27 • The issue must have been actually litigated in the prior proceeding;
- 28 • The issue must have been necessarily decided in the prior proceeding;
- The decision in the former proceeding must be final and on the merits; and

1 • The party against whom issue preclusion is asserted must be the same as or in privity with  
2 the party to the prior proceeding.

3 (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501; *Lucido v. Superior Court* (1990) 51  
4 Cal.3d 335, 341; *Shuler v. City of Los Angeles* (2021) 62 Cal.App.5th 793, 798.) Further, when the  
5 issue is a question of law rather than one of fact, **the prior determination is not conclusive either**  
6 **if injustice would result** or if the public interest requires that relitigation not be foreclosed. (*City*  
7 *of Sacramento v. State of California* (1990) 50 Cal. 3d 51, 64 [emphasis added].)

8 Here, the Settling Parties and the Watermaster ask this Court to deny the Zamrzlas’ motions  
9 based on the contention that the issues were already decided when the Court ruled on Long Valley  
10 Road, L.P.’s (LVRP) Motion for Leave to Intervene. Although the Settling Parties and the  
11 Watermaster fail to cite any relevant case law or other legal authorities for this proposition, it is  
12 clear the Watermaster is attempting to apply the principles of res judicata. The attempt fails.

13 The issues raised by the Zamrzlas are not identical to the issues raised by LVRP. Whereas  
14 LVRP filed a motion to intervene in the Judgment, the Zamrzlas seek to vacate or amend the  
15 judgment. Like the Zamrzlas, LVRP contended it was not properly classified as a Small Pumper,  
16 but unlike the Zamrzlas, LVRP did not contend it was never served with notice of the litigation.  
17 Indeed, LVRP admitted “it may have been served with related notices of Small Pumper Class  
18 certification and settlement....” Finally, the Zamrzlas are not LVRP. They are separate parties,  
19 and the Zamrzlas have not had a prior opportunity to litigate their claims, and thus res judicata does  
20 not apply here. Indeed, even if there was a plausible rationale for res judicata – which there is not  
21 – the Zamrzlas would be entitled to avoid any preclusive effect on the basis that injustice would  
22 result if res judicata were applied.

## 23 VI. Conclusion

24 Had the Zamrzlas been properly notified of the litigation and its potential effect on their  
25 pumping rights, they could have, and would have, litigated their rights at the time. But the simple  
26 fact is, they were not properly notified.


27 Moreover, the Zamrzlas’ water use history clearly establishes they are not Small Pumpers,  
28 as defined in the Judgment. The Zamrzlas simply ask for the opportunity to pursue their water

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rights as any other party was permitted in the underlying litigation.

Dated: March 13, 2023

**MATHENY SEARS LINKERT & JAIME, LLP**

By:   
\_\_\_\_\_  
NICHOLAS R. SHEPARD, ESQ., Attorney  
for Defendants, JOHNNY ZAMRZLA,  
PAMELLA ZAMRZLA, JOHNNY LEE  
ZAMRZLA AND JEANETTE ZAMRZLA  
(collectively "ZAMRZLAS")



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**PROOF OF SERVICE**  
**[Code Civ. Proc. §§ 1011, 1013, 1013(a)(3) & 2015.5]**

**ANTELOPE VALLEY GROUNDWATER CASES**  
Case No. 1-05-CV-049053 (For filing purposes only)  
JCCP 4408

(STATE OF CALIFORNIA, COUNTY OF SACRAMENTO)

I am a resident of the United States and employed in Sacramento County. I am over the age of eighteen years and not a party to the within entitled action. My business address is 3638 American River Drive, Sacramento, California.

On March 10, 2023, I served the following documents on the parties in this action described as follows:

**ZAMRZLA'S TRIAL BRIEF**

[X] **BY ELECTRONIC SERVICE:** by posting the document(s) listed above to the Antelope Valley Groundwater Cases to all parties listed on the Santa Clara Superior Court Service List as maintained via Glotrans. Electronic service completed through <http://www.avwatermaster.org>.

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

Executed on this 10<sup>th</sup> day of March 2023 at Sacramento, California.

  
\_\_\_\_\_  
MYA SILVA