COURT OF APPEAL, STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT
F075451

ANTELOPE VALLEY GROUNDWATER CASES

Appeal from the Superior Court of Los Angeles
Superior Court No. JCCP4408
Hon. Jack Komar

APPELLANTS' REPLY TO PUBLIC WATER SUPPLIERS' RESPONDENT'S BRIEF (2 OF 3)

(Willis Class Appeal)

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INTRODUCTION

There are four primary issues for resolution in this appeal.

First, whether 2015 Judgment and Physical Solution violate the California Constitutional and groundwater law.

Second, whether the 2015 Judgment is inconsistent with, and therefore precluded by, the 2011 Judgment approving the Willis Class Settlement Agreement.

Third, whether the trial court violated the Willis Class's due process rights by denying the Willis Class of fair notice or a meaningful opportunity to be heard.

Fourth, the trial court breached its duty to "thoroughly investigate" all possible reasonable Physical Solutions and adopt "a workable solution that maximizes the reasonable beneficial use of available waters to all parties."

The Public Water Supplier Respondents ("Purveyors") are most crucial with regard to the second issue because Purveyors reneged on the settlement they struck with the Willis Class in 2011. When all that remained in the Antelope Valley Adjudication was to enter a Physical Solution consistent with the terms of the 2011 Judgment and Purveyors' settlement with the Class ("Willis Class Settlement"), the Purveyors and the overlying landowners negotiated a stipulation, without participation of the Willis Class, that left nothing for the Class– no present right to water and no

future right to water from the Native Safe Yield ("NSY")– and permanently allocated all of Basin's NSY to others in perpetuity.

Under the terms of the Willis Class Settlement and the court's 2011 Judgment, Purveyors were required to "not take any positions or enter into any agreements ... inconsistent with the exercise of the Willis Class Members' Overlying Right to produce and use their correlative share ... of the Basin's" native supply (3REPLYEXCT2541:13-16) (176JA 157684:13-16) and to "cooperate and coordinate their efforts ... so as to obtain entry of judgment and/or adoption" of a Physical Solution "consistent with the terms" of the 2011 Judgment. (3REPLYEXCT 2542:28-2543:4; 2547:13-16) (176JA157685:28-157686:4; 157690:13-16.)

Purveyors' conduct in this case could not be any more inconsistent with these promises. Purveyors' callous breach of their obligations to the Willis Class and unlawful violation of their duties under the 2011 Judgment left the Wills Class with no option but to seek the aid of this Court by way of an appeal.

CLARIFICATION OF THE RECORD AND FACTUAL BACKGROUND

A. The Size of the Willis Class Has Been Established.

Purveyors suggest there was some confusion regarding the size of the Willis Class. (Purveyors' Reply Brief ("PRB") p.31-32, n 4.) There are approximately 18,000 Willis Class members who own approximately 65,000 parcels of land in the Basin. (46RT25304:19-25305:1.)

B. The Willis Class was primarily a Defendant Class

In their brief, Purveyors imply that the Willis Class initiated the adjudication proceedings. Purveyors needed a comprehensive adjudication of all parties in the basin to secure waiver of the federal government's sovereign immunity under the McCarran Amendment. (3AA2063 ["To satisfy the McCarran Act objections...with the encouragement of the court, two class actions were created [Willis Class and Wood Class]"].) Establishing the two classes enabled the Purveyors and the trial court to achieve a comprehensive adjudication and enter a physical solution. To protect their interests, the Willis Class filed a class action complaint which sought to preserve their right to share in the NSY and eliminate the threat of

prescription raised by the Purveyors who claimed over 40% of the NSY. (2JA1901-1908.) In essence, the parties and the trial court understood that the Willis Class was principally a "defendant" class.

C. The Willis Class is Not Adverse to the United States in This Appeal.

Purveyors spend an inordinate amount of time discussing the United States' participation in the Antelope Valley Adjudication. (PRB pp. 26-27, 29-30.) Purveyors insinuate the Willis Class challenges the trial court's allocation of the Federal Reserved Right to the federal government.

As detailed in Appellants' Reply to the United States' Brief (Brief 3 of 3), Appellants do not contest the allocation of 7,600 acre-feet per year to the United States. The only issue on appeal involving the Federal Reserved Right is the Class's contention that the 2015 Judgment and Physical Solution inappropriately allocates the *unused* portion of the Government's Federal Reserve Right to Purveyors. The Physical Solution's disposition of the unused Federal Reserve Right is both inconsistent with California water rights law and with the production limitations agreed to by Purveyors in its

settlement with the Willis Class and enforced upon them by the 2011 Judgment.

D. The Purveyors Omit Provisions of the Class Notice.

In support of their argument that the Willis Class received adequate notice of the Physical Solution, the Purveyors quote portions of the Class Notice of Settlement but they omit the key factual summary of the consideration exchanged between the parties as part of the Willis Class Settlement and focus on a cherry-picked phrase they argue vitiated the consideration. (PRB pp. 103-104.) The Notice of Settlement summarized the terms of the Willis Class Settlement as follows:

a. The Class agrees not to contest the [Purveyors'] estimates of the Basin's [NSY]. The Court will determine the Basin's [NSY] based on evidence to be presented in open court.

b. The Class agrees not to contest the [Purveyors'] estimates of the Basin's Total Safe Yield. The court will determine the Basin's Total Safe Yield based on evidence to be presented in open court.

c. The parties agree that the United States has a Federal Reserved Right to some portion of the Basin's [NSY], the amount of which will be determined by the Court.

d. The Settling Parties agree that the Settling Parties each have rights to produce groundwater from the Basin's [NSY], as follows: (i) [Purveyors] collectively have the right to

produce up to 15% of the Basin's Federally Adjusted Native Safe Yield; and (ii) the Willis Class has a correlative right (along with other overlying landowners) to produce up to 85% of the Federally Adjusted Native Safe Yield.

e. All parties have the right to recapture return flows from water that they had imported. The Class agrees not to contest the [Purveyors'] estimates that such return flows total 28,200 acre-feet per year, of which 25,100 acre-feet is from municipal and industrial use.

f. The Settling Parties agree that the Basin has limited water resources and that there is a need for a groundwater management plan for the Basin. The Parties have agreed to be bound by such a plan, as may later be ordered by the Court.

g. The Settlement contains mutual releases of the claims of the Settling Parties have asserted against each other in the litigation. The Settlement specifically provides that it will not prejudice the rights of the non-settling parties.

(1REPLYEXCT241,¶4)(9JA10295,¶4)

Purveyors further omit the fact that the Notice of Settlement provided Class members with a link to the "complete settlement agreement" and that the Notice was merely "a summary of the basic terms and conditions of the proposed settlement." (*Ibid.*)

E. Under the 2015 Judgment, the Trial Court Does Not Have Jurisdiction to Modify the Allocated Production Rights in the NSY.

Purveyors also contend that the trial court retained jurisdiction to determine whether a proposed future use by the Willis Class is

reasonable at the time such use arises. (PRB p. 78.) In fact, the Physical Solution severely limits the trial court's jurisdiction—especially in regard to determining the reasonableness of future water uses. As discussed in section II below, the Physical Solution permanently allocates all of the NSY to other overlying landowners and to the Purveyors and does not provide the trial court authority to *modify* the permanent allocations – even if the allocated use becomes unreasonable. (*Id.*)

STANDARD OF REVIEW

Purveyors' discussion of the standard of review in this case is nearly identical to that of Landowners. The Class therefore refers to the counterpoints made in its Reply to Landowners Respondents Brief (Brief 1 of 3), and hereby incorporate that discussion in response to Purveyors' misplaced exclusive reliance on the presumption of correctness and abuse of discretion standard.

LEGAL DISCUSSION

I. THE 2015 JUDGMENT AND PHYSICAL SOLUTION VIOLATE CALIFORNIA WATER LAW.

A. The 2015 Judgment and Physical Solution Improperly Extinguished the Overlying Correlative Rights of the Willis Class Members to Pump from the Native Safe Yield of the Basin.

In their Opening Brief, Appellants argue their overlying correlative water rights to the Basin's Native Safe Yield ("NSY") were improperly extinguished in the 2015 Judgment and Physical Solution.

In response, Purveyors insist the Class's correlative overlying water rights were not extinguished because the Class members retain correlative rights. (PRB p. 52-53.) Alternatively, Purveyors argue the trial court had the legal authority to "subordinate" the overlying rights of the Willis Class members to the overlying rights of other landowners and to the appropriators. (*Id.* at 79-82; 88-91.)

Purveyors' arguments are unpersuasive and fail for the reasons described below.

1. Willis Class members' overlying correlative rights are "superior to that of other persons who lack legal priority."

As detailed in Appellants' Opening Brief, an overlying right is "'the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto.'" (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240 [quoting *California Water Service Co. v. Edward Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715, 725-26].) The full amount of the overlying right is that amount of water that is required for the landowners' "present and prospective" reasonable beneficial use upon the land. (*Barstow, supra,* 23 Cal.4th at 1240.) As between overlying owners, the rights...are correlative; [i.e.,] each may use only his reasonable share when water is insufficient to meet the needs of all." (*Id.* at 1241.) Existing overlying uses do not take priority over unexercised overlying rights. (*Tehachapi-Cummings County Water District v. Armstrong* (1975) 49 Cal.App.3d 992, 1001.) "There are no senior overlying users who gain priority by being the first to pump groundwater. Overlying rights are not lost by nonuse." (Arthur L.

Littleworth & Eric L. Garner, California Water III (Solano Press 2019), at 75 (footnotes omitted).

In contrast, "any water not needed for the reasonable beneficial use of those having prior rights [i.e., the overlying landowners] 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." (*Barstow, supra*, 23 Cal.4th at 1241.)[1]

The rights of overlying landowners are "superior to that of other persons who lack legal priority" – i.e., those with appropriative rights, "unless the appropriator has gained prescriptive rights through the [adverse, open and hostile] taking of non-surplus waters." (*Id.* at 1240; 1241 [quoting *California Water Service Co., supra,* 224 Cal. App.2d at 725-26].)

With respect to reasonable and beneficial use, the Supreme Court emphasized, that California Constitution's Article X, Section

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1 The Supreme Court has held that the supply of water as part of a municipal water system is ***not*** an overlying groundwater right, even where the lands supplied with water overlie the groundwater basis. (*City of Pasadena v. City of Alhambra*, (1949) 33 Cal. 2d 908, 927.) Thus, the Respondents are appropriative groundwater rights holders.

2 "carefully preserves riparian and overlying rights." (*Id.* at 1242.) Those rights include the long-standing principle that an overlying groundwater right holder need not exercise his or her rights to preserve their priority over appropriative rights holders. (*Id.* at 1243 ["Because the court cannot fix or absolutely ascertain the quantity of water required for future use at any given time, a trial court should declare prospective uses paramount to the appropriator's rights, so the appropriator cannot gain prescriptive rights in the use. Until the paramount right holder needs it, the appropriator may continue to take water"].)

2. The Willis Class members' overlying rights may not be extinguished.

The 2015 Judgment defines a "Production Right" as "the amount Native Safe Yield that may be Produced each Year free of any Replacement Water Assessment and Replacement obligation." (3REPLYEXCT2389:4-8)(176JA 157532:4-8.) The Physical Solution also states that: "[T]he total of the Production Rights decreed in this Judgment equals the Native Safe Yield." (3REPLYEXCT2389:4-8) (176JA157532:6.) The Statement of Decision notes that: "[T]he Willis Class members are property owners in the Basin who have never

exercised the overlying rights." (3REPLYEXCT2348:7-8) (176JA157472:7-8.) Further, "because the landowner's reasonable and beneficial use pumping alone exceeded the native safe yield while public water supplier pumping was taking place, the unexercised overlying rights of the Willis Class are not entitled to an allocation in the Physical Solution." (3REPLYEXCT2348:20-23) (176JA157472:20-23.) Additionally, any increase or decrease in the NSY in the future is allocated pro-rata to the named landowners and appropriators but not the Willis Class. (3REPLYEXCT2427:23-27) (176JA157570:23-27.)

The foregoing provisions of the 2015 Judgment and the Statement of Decision make it absolutely clear that the members of the Willis Class are not allocated any portion of the NSY. Moreover, as detailed in section II below, the allocation of the NSY to others is a permanent allocation. Thus, the Willis Class members' "appurtenant rights of an Overlying Owner to use groundwater from the Native Safe Yield for overlying reasonable and beneficial use" are extinguished by the 2015 Judgment. The trial court confirmed that the Willis Class is forbidden from pumping from the NSY: "The physical solution, it was understood, could require a reduction in

actual pumping and forbid new pumping from the aquifer (***as it ultimately did***)". (3AA2065, emphasis added.)

Purveyors argue the Class members' overlying correlative rights have not been technically extinguished, citing to the trial court's *finding* in its Statement of Decision that "the Willis Class members have an overlying right that is to be exercised in accordance with the Physical Solution herein." (PRB at p.52, citing 176JA157474.) Purveyors' reliance on the trial court's statement is misplaced. First, a trial court's statements are not evidence. (*Orange County Water Dist. v. The Arnold Engineering Co.* (2018) 31 Cal.App.5th 96, 124, fn. 10.) Purveyors must provide proper citations to the evidence supporting factual assertions in its briefing. (*Ibid.*)

Second, the question of whether the Willis Class's overlying rights still exist or were extinguished is a question of law for this Court to determine. (*Teachers' Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 1028 [whether a right exists and whether an impairment of this right is unconstitutional present questions of law subject to independent review].) An appellate court is often in a better position than the trial court to decide questions of law, given the benefits of plurality and the opportunity for thoughtful debate on

appeal. (*Hurtado v. Statewide Home Loan Co.* (1985) 167 Cal.App.3d 1019, 1023-1024 [disapproved on other grounds in *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 479].)

Third, an overlying landowner has the right to water necessary for the landowners' "present and prospective" reasonable beneficial use upon the land. (*Barstow, supra,* 23 Cal.4th at 1240.) Here, contrary to the trial court's finding, the Physical Solution does not recognize the correlative Class members' water right in the NSY for prospective reasonable and beneficial use on their land. (3REPLYEXCT2389:6; 2348:20-23) (176JA157532:6;157472:20-23) The Class has lost its correlative groundwater rights in the NSY.

Purveyors then argue the Willis Class members have the right to pump water if they apply and secure the Watermaster's approval, and pay a Replacement Water Assessment fee. (PRB p. 78-79.) However, the New Production Application procedure strips the Class of their correlative groundwater rights and imposes unreasonable, costly and burdensome conditions and may prevent a Class member from ever pumping. Further, the Replacement Water Assessment subjects the Class to the unreliability of imported water. (3REPLYEXCT1977) (173JA154503.)

In order to obtain a right to pump groundwater, a member of the Willis Class must first submit an application to the Watermaster Engineer in accordance with the 12-step New Production plan. (3REPLYEXCT2411:27-2412:2)(176JA157554:27-157555:2.)[2]

Significantly, even if the Class member complies with the 12-step process, the Watermaster may still deny a Willis Class member the right to pump. (3REPLYEXCT2429)(176JA157572:1-2.) Moreover, even if a right to pump is granted by the Watermaster, subject to a possible exception for domestic use pumping,[3] a Willis Class member must pay a "Replacement Assessment" fee. (3REPLYEXCT2429:1-2) (176JA 157572:1-2.)

Finally, the Replacement Assessment is used by the Watermaster to purchase water from outside the Basin to replace water that may be pumped in the future by the Class or others. (3REPLYEXCT2390:1-5) (176JA157533:1-5.) The source of this imported water is from a notoriously unreliable source, the State

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2 *See,* section III.A-C below for a detailed discussion of the expensive and unreasonable 12-step process.

3 The 2015 Judgment includes a possible exemption for single-family domestic water supply. (3REPLYEXCT2430:21-25) (176JA 157893:21-25.)

Water Project. (3REPLYEXCT 1977; 1981; 2354:14-18) (173JA154503; 154507; 176JA157478:14-18.) Thus, if there is no imported water available for purchase by the Watermaster at the time of the application, then a Willis Class member may be denied the ability to pump. (3REPLYEXCT2410:26-2411:2) (176JA157533:26-157554:2)

B. The 2015 Judgment and Physical Solution Improperly Modify and Subordinate the Overlying Rights of the Willis Class Members.

1. *Long Valley*

Purveyors and the trial court rely on the decision in *In re Waters of Long Valley Creek Stream System* ("*Long Valley*")(1979) 25 Cal.3d 339, to justify purportedly "subordinating" the unexercised overlying rights of the Willis Class members to those of other overlying landowners and to the appropriative rights of the Purveyors. (PRB at pp. 79-81.) Purveyors' reliance on *Long Valley* is misplaced.

In *Long Valley,* the Supreme Court held that, in a statutory adjudication of all surface water rights, the State Water Resources Control Board ("Board") has authority to relegate unexercised

riparian rights to a priority below that of all active surface water rights. (*Long Valley, supra,* 25 Cal.3d at 358-59.)

Contrary to Purveyors' assumption (PRB p. 79-81), the *Long Valley* Court did not hold that Article X, Section 2 directly conferred authority on the Board or the courts to abrogate the priority of an unexercised riparian right. Instead, the Court determined that in "light of these policies and of the constitutional intent to limit unduly expansive interpretations of water rights that would contravene them, *it becomes clear that article X, section 2, enables the Legislature to exercise broad authority in defining and otherwise limiting future riparian rights, and to delegate this authority to the Board.*" (*Id.* at 351, emphasis added.)

The Court in *Long Valley* concluded that although the Board was delegated authority to define and limit future riparian rights, the rights of a riparian owner may not be "not destroyed or impaired by the fact that he has not yet used the water upon his riparian lands, and therefore that the riparian right exists, whether exercised or not." (*Id.* at 347.)

Subsequent decisions have made clear the principle of subordination in *Long Valley* does not justify the Physical Solution's

subordination of the Willis Class members' unexercised overlying rights nor its imposition of unreasonable conditions on future pumping by the members of the Willis Class.

2. The promotion of certainty.

Purveyors point out that the trial court found the Physical Solution promotes certainty. (PRB pp. 80-81, citing to *Long Valley, supra*, 25, Cal.3d at 355-356.)

The promotion of certainty, and current and future reasonable use are important (*Long Valley, supra; Barstow, supra,* 23 Cal.4th at 1241-428), but the Court in *Long Valley* did not find, in the absence of the delegation of authority by the Legislature, that a trial court in groundwater adjudication has the authority to subordinate unexercised overlying groundwater rights to achieve these principles.

In *Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74, the Court of Appeal reversed a trial court decision that applied *Long Valley* to subordinate the unexercised rights of overlying landowners below those of all active groundwater producers, including overlying users and appropriators. The *Wright* court explained, "[E]ven though it may appear a logical extension of *Long Valley* to allow a trial court

adjudicating competing claims to groundwater to subordinate an unexercised right to a present appropriative use, **we must hold such extension inappropriate.**" (*Id.* at 87, emphasis added.) "[*A*]b*sent a statutory scheme for comprehensive determination of all groundwater rights,* the application of *Long Valley* to a private adjudication would allow prospective rights of overlying landowners to be subject to the vagaries of an individual plaintiff's pleading without adequate due process protections." (*Id.* at 89, citation omitted, emphasis added.)

Purveyors argue *Wright* is inapplicable to this case because, unlike here, *Wright* was not a comprehensive adjudication of the rights of all of the potential groundwater right holders involved. (PRB at p. 83.) This argument is unpersuasive for two reasons.

First, even though *Wright* was not a comprehensive adjudication, the Court declined to apply the subordination principle of *Long Valley* because the Legislature had not established a statutory scheme authorizing a board or a court to subordinate an unexercised overlying groundwater right.

Second, the holding in *Wright* that an unexercised overlying right cannot be subordinated was later reiterated by the Supreme

Court in *Barstow*. (*Id.* at 1249, fn. 13 ["*Wright* court refused to apply *Long Valley* to limit the scope of an overlying owner's future unexercised groundwater right to a present appropriative use, because the comprehensive legislative scheme applicable to the adjudication of surface water rights and riparian rights is not applicable to groundwater"].)

In footnote 13 [relied upon extensively by Purveyors], the Court responded to the problems created by **existing** pumpers, like in this case, whose aggregate pumping caused overdraft of the basin and, if continued, would frustrate the physical solution's policies of reducing such pumping to the safe yield. The Court concluded, a trial court could "apply the *Long Valley* riparian right principles *to reduce a landowner's future overlying water right use below a current but unreasonable or wasteful usage.*" (*Id.* at 1249, fn. 13.) The Court went on to opine that in doing so, it was not unreasonable that "*courts should have some discretion to limit the future groundwater use of an overlying owner who has exercised the water right.*" (*Id.*)

From the foregoing, it is clear that *Barstow* only acknowledges that a trial court has authority to limit ***currently exercised*** overlying rights to a future production right based on a finding that

continuation of the current pumping levels would be unreasonable. It did **not** hold, as Purveyors contend, that a trial court may subordinate never before exercised overlying rights in the absence of a grant of legislative authority.

3. The new legislation

Purveyors also rely on a new law to justify subordinating and conditioning the Willis Class members' right to pump. (PRB p. 85.) The trial court found that a new law (referring to Code of Civil Procedure section 830 (b)(7)) provides a basis for conditioning the Willis Class' rights (3AA2070) (3REPLYEXCT2349:1-3, emphasis added.) (176JA 157473:22-157474:1-3)

In their opening brief, Appellants pointed out that the new law does not provide authority to the trial court to subordinate or unreasonably condition the Willis Class members' unexercised overlying groundwater rights. The bill enacting in the statute (Assembly Bill 1390) specifically states that it does not apply to the Antelope Valley adjudication. Additionally, the bill was enacted during the 2014-2015 legislative session. The bill was not an urgency measure and did not become effective until January 1, 2016—after the 2015 Judgment was entered. Generally, a newly enacted statute

is applied prospectively unless it is clear from statutory language or extrinsic sources that the Legislature intended retroactive application. (*Green v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 1426, 1436-37.) Thus, the trial court could not have relied on the new law as authority for imposing conditions on the Willis Class landowners' rights.

Purveyors seek to dodge this problem by arguing the trial court did not really rely on the new law. (PRB at p.85.) Purveyors suggest the new law merely *reinforces* existing case law that provides authority for the trial court to subordinate Appellants' unexercised overlying rights. (*Id.*)

Existing case law does not provide such authority to the trial court. Although Section 830 enables a court in a comprehensive adjudication to "consider applying the principles established in ... *Long Valley,*" when evaluating the priority of unexercised water rights, the Section also states: "[E]xcept as provided in this paragraph, this chapter shall not alter groundwater rights or the law concerning groundwater rights."

As explained above, "the principles established in ... *Long Valley*" do <u>not</u> authorize the extinguishment or the unreasonable

conditioning of the unexercised overlying rights of the Willis Class. (*Long Valley*, *supra*, 25 Cal.3d at 347.)

4. *Tulare*

Purveyors next quote *Tulare Irr. Dist. v Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489 to argue the Supreme Court, by using the phrase "*if so*," acknowledged that a trial court has the authority to determine that a new overlying use may be denied if the use is found to be unreasonable. (PRB at p. 79[" the trial court may determine whether the new use, under all the circumstances, is a reasonable and beneficial use and, if so, the quantity required for such use"].)

Purveyors' reliance on *Tulare* is misplaced. The *Tulare* Court held Article X, section 2 "not only protects the actual reasonable beneficial uses of the riparian, but ***also the prospective reasonable and beneficial uses*** of the riparian" (*Id.* at 525, emphasis added.) Balancing the need for certainty and recognizing that prospective reasonable and beneficial uses cannot be fixed, the *Tulare* Court found that "the trial court in its findings and judgments, ***should declare such prospective uses paramount to any right of the appropriator***." (*Id.*) In doing so, the Court recognized the need to protect such prospective rights to water

against potential claims of prescription by appropriators while ensuring water is put to reasonable and beneficial use at all times. (*Id.*)[4]

Tulare further held that a right is not lost and cannot be extinguished due to non-use of that right. (*Id.* at 530-531.) In fact, any argument a riparian right could be lost due to non-use "is contrary to the letter and spirit of the 1928 constitutional amendment.... That amendment, while limiting the riparian as against an appropriator, to reasonable beneficial uses ... ***expressly protects the riparian not only as to his present needs, but also as to future or prospective reasonable beneficial needs.***" (*Id.*)

The "if so" language in *Tulare* does not support the trial court's extinguishment of the Willis Class' overlying rights to use groundwater from the NSY or its imposition of unreasonable conditions on future use since such extinguishment is inconsistent with *Tulare's* holding that prospective future uses must be protected. The logical and reasonable interpretation of *Tulare* is that

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[4] Although the quoted language refers to riparian rights, overlying landowner rights are analogous to riparian rights. (*Tulare, supra,* 3 Cal.2d at 491.)

prospective uses of water cannot be extinguished or unreasonably conditioned by a physical solution in groundwater adjudications. Instead, groundwater should be used by others until the overlying landowner's need for water arises at which time the court's continuing jurisdiction would allow for a determination of whether the new use is reasonable and beneficial and for quantification of the use.

5. *Hallett Creek*

Purveyors also rely on *In re Water of Hallett Creek System* (1988) 44 Cal.3d 448, 471, for the proposition that a future use may be subordinated. (PRB p. 81-82.) However, *Hallet Creek* is readily distinguishable. In *Hallett Creek*, the Supreme Court held the United States must apply to the Board for authority to exercise a previously unexercised riparian right and that the Board would have to determine whether the use was reasonable and should be permitted. In *Hallet Creek*, the Legislature had granted the Board authority to subordinate an unexercised riparian right. Here, the trial court was not granted such authority. Therefore, like *Long Valley*, *Hallet Creek* did not provide authority to the trial court to

subordinate or deny the unexercised overlying rights of the Willis Class.

6. *Barstow*

Finally, Purveyors turn to *Barstow* to further support their proposition that the trial court could subordinate Willis Class members' overlying rights. (PRB p. 58.) Purveyors rely on the following finding:

> "[I]n ordering a physical solution ... a court may neither change priorities among the water rights holders nor eliminate vested rights ... without first considering them in relation to the reasonable use doctrine"

(*Barstow, supra,* 23 Cal.4th at 1250.)

As previously discussed, in *Barstow*, the Supreme Court did not endorse the authority of trial courts to subordinate *unexercised* overlying rights. Appellants submit that the finding from *Barstow* only acknowledges that a trial court has authority to limit *currently exercised* overlying rights to a future production right based on a finding that continuation of the currently exercised pumping would be unreasonable.

In any event, the trial court in this case did not evaluate the reasonableness of potential future uses of water by the Willis Class

by conducting an individualized inquiry into each Class members' water use; instead, it made a blanket determination that "it would be unreasonable to require present users to further reduce their already severely reduced water use to reserve a supply of water for non-users' speculative future use." (3REPLYEXCT2350:11-13) (176JA157474:11-13.) Consequently, *Barstow* did not provide the trial court with authority to extinguish the Willis Class members' unexercised overlying rights to use groundwater from the NSY.

For the foregoing reasons, Purveyors' argument that existing case law provides authority for the trial court to subordinate and condition Appellants' unexercised overlying rights is not persuasive. The trial court's blanket extinguishment of the Willis Class member's overlying rights is unauthorized under any circumstances.

C. The 2015 Judgment and Physical Solution Improperly Subordinates the Willis Class Members' Overlying Rights to Other Overlying Users Based on "Self-Help Pumping."

Purveyors argue that self-help pumping by other overlying landowners, which began in 1951 when the Basin went into overdraft, divested the Willis Class members of their overlying rights. Under the self-help doctrine, if a basin is in overdraft and the

conditions for prescription are met, a landowner may preserve an overlying right by continuous pumping of non-surplus water during a period of overdraft. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 299.)

Purveyors argue that because Appellants did not begin pumping or file an action to protect their rights against other landowners, their unexercised rights may be subordinated to the prescriptive rights established by the other overlying owners' self-help pumping. (PRB pp. 88-91.) Purveyors' contention is without merit.

First, Purveyors agreed in the 2011 Judgment to not enforce a prescriptive right against Appellants. (3REPLYEXCT2541-2542.) (176JA157684-157685) Therefore, Appellants cannot lose any of their unexercised overlying rights to Purveyors based upon prescription.

Second, as Purveyors admit, prescription of an overlying right by another overlying landowner has never been directly addressed by the courts. (PRB pp. 89-90.).

Third, as previously noted, it has been long recognized that existing overlying uses do not take priority over unexercised

overlying rights. (*Tehachapi, supra,* 49 Cal.App.3d at 1001.) "There are no senior overlying users who gain priority by being the first to pump groundwater. Overlying rights are not lost by nonuse." (Arthur L. Littleworth & Eric L. Garner, California Water III (Solano Press 2019), at 75 (footnotes omitted).

Fourth, as discussed above, California law clearly proscribes the loss of the Willis Class members unexercised overlying rights through non-use.

Fifth, the trial court's reliance on *Pasadena v. Alhambra, supra,* 33 Cal.2d 908, to extinguish the Willis Class members' correlative overlying groundwater rights based upon prescription is clearly misplaced. (3REPLYEXCT2411:19-22)(176JA157554:19-22.) There is no authority for such action. In *Pasadena,* the Supreme Court established the doctrine of "mutual prescription" reasoning that, once overdraft commences, all groundwater extraction becomes unlawful because aggregate extractions exceed the safe yield. (*Pasadena, supra,* at 933.) The Court found that if overdraft continues for five years, and the other elements of prescription are satisfied, then "the rights of all the parties, including both overlying users and appropriators ... become mutually prescriptive against all

the other parties and, accordingly . . . all rights are of equal standing, with none prior or paramount." (*Id.* at 928.) The *Pasadena* Court required all *active* groundwater users to reduce their pumping by approximately one third, the amount that the trial court determined was required to bring aggregate pumping within the safe yield. (*Id.* at 922-23.)

However, in *Pasadena*, the Supreme Court left open the question of how the doctrine of mutual prescription applies to unexercised rights. (*Id.* at 932 ["we need not determine whether the overlying owners involved here retained simply a part of their original overlying rights or whether they obtained new prescriptive rights to use water. The question might become important in order to ascertain the rights of the parties in the event of possible future contingencies, but these may never happen"].)

The Supreme Court answered this question 26 years later in *Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d 199. In *Los Angeles,* the Court held that unexercised overlying groundwater rights are not lost or diminished by prescription, including in those situations where active overlying and

appropriative rights may be reduced based on prescription. As to the future rights of overlying landowners, the Court explained, "[T]he private defendants may show overlying rights to native ground water for reasonable beneficial uses on their overlying land, subject to any prescriptive rights of another party." (*Id.* at 293.) It then added, "Such prescriptive rights would not necessarily impair the private defendants' rights to ground water for new overlying uses for which the need had not yet come into existence during the prescriptive period." (*Id.* at 293, fn. 100.)

In other words, unexercised overlying groundwater rights are <u>not</u> subject to loss or diminishment as a result of groundwater pumping by active overlying or appropriative users – even under conditions of overdraft. This is consistent with the Supreme Court's later finding in *Barstow* that "a trial court should declare prospective uses paramount to the appropriator's rights, so the appropriator cannot gain prescriptive rights in the use." (*Barstow, supra,* 23 Cal.4th at 1243.)

The reason for this rule is inherent in the law of prescription: A prescriptive right does not accrue until the allegedly prescriptive use is "adverse to the original owner." (*Santa Maria*, *supra*, 211 Cal. App. 4th at 291.) As stated by the preeminent water law authority, "[T]here is no...deprivation, and consequently no basis upon which to found a prescriptive right, in the use of waters at times when the owner of record does not require them for his own purposes." (Wells A. Hutchins, California Law of Water Rights (1956) at p. 309.)

Thus, the law does not authorize prescription where (as here) the aggregate pumping is in excess of the safe yield and active groundwater rights holders (whose collective pumping has caused overdraft) assert prescriptive rights against the unexercised overlying rights of the members of the Willis Class.

In sum, Purveyors' argument that Appellants' unexercised overlying rights have been lost due to the other overlying owner's self-help pumping and/or prescription is without merit.

II. THE PHYSICAL SOLUTION'S PERMANENT ALLOCATION OF THE WILLIS CLASS'S WATER RIGHTS TO RESPONDENTS VIOLATES THE "REASONABLE AND BENEFICIAL USE" DOCTRINE AND CALIFORNIA'S PRIORITY FOR DOMESTIC USE.

The Physical Solution's allocation of the entire NSY is a permanent allocation to the stipulating parties. This permanent allocation is in conflict with reasonable and beneficial use doctrine and with California's priority for domestic use. Notably, although this defect was addressed in the Opening Brief, Respondents do not discuss the permanency of the allocations contained in the Physical Solution. (*See, Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 ["Appellate briefs must provide argument and legal authority for the positions taken"]; *Estate of Neilson* (1962) 57 Cal.2d 733, 746 [silence, evasion, or equivocation in response to a statement may be considered a tacit admission statement is true].)

While the exercise of a water right may be deemed reasonable when first recognized and may be exercised reasonably for many years, it can become unreasonable in the future. (*Barstow, supra,* 23 Cal.4th at 1243; *Tulare, supra,* 3 Cal.2d at 567.) Accordingly, courts have held "reasonable and beneficial use" determinations must constantly be re-evaluated. (*Joslin v. Marin Municipal Water*

District (1967) 67 Cal.2d 132, 143.) Respondents admit that: "[C]onditions for reasonable use of groundwater in the Antelope Valley changed over time as the Antelope Valley changed...." (PRB, p. 20.) Logically, there is no reason why conditions for reasonable uses in the Antelope Valley will not change in the future as they have in the past. In *Barstow,* the Court reiterated that while "water right priority has long been the central principle in California water law... the corollary of this rule is that an equitable physical solution must preserve water right priorities to the extent those priorities do not lead to unreasonable use." (*Barstow, supra*, 23 Cal.4th at 1243). Here the permanent allocation of the rights to pump groundwater may result in future unreasonable uses which cannot be rectified.

Without question, the Physical Solution allocates *all* of the NSY to the Stipulating Parties. (3REPLYEXCT2389:6; 2392-2402) (176JA 157532:6; 176JA157535-157545.) The Physical Solution expressly states that: "[T]he total of the Production Rights decreed in this Judgment equals the Native Safe Yield." (3REPLYEXCT 2389:6) (176JA157532:6.) Concerning future changes in the NSY, the Physical Solution provides that beginning with the seventeenth (17th) year after the entry of the 2015 Judgment, 2033, upon a

recommendation from the Watermaster Engineer, the court may approve an increase or reduction in the NSY. (3REPLYEXCT2427)(176JA157570:9-11.) Significantly, the Physical Solution states the court must allocate the pro-rata decrease or increase to the landowners and appropriators listed in exhibits 3 and 4 to the Physical Solution. (3REPLYEXCT2427:23-27[The Federal Reserved Water Right of the United States is not subject to an increase or decrease].) (176JA157570:23-27.) Consequently, the initial allocated percentages to the NSY are permanent.

Although the Physical Solution gives the Watermaster Engineer authority to curtail the exercise of a stipulating party's production right to avoid or mitigate a material injury if necessary, if material injury is found, the Watermaster must provide an equivalent quantity of water to such party for free as a substitute water supply. (3REPLYEXCT2413:11-15)(176JA157556:11-15.) Therefore, even if a stipulating party causes material injury, he/she/it does not lose any portion of their initial permanently allocated production right.

In further conflict with established law, the 2015 Judgment leaves no room for the Watermaster or the court to re-evaluate the stipulating parties' reasonable and beneficial use over time. Although the Physical Solution reserves jurisdiction for the court, upon motion of a party, to interpret, enforce, administer or carry out the Judgment, there is no provision allowing the court to amend and modify its terms if an allocated water use were to become unreasonable in the future. (3REPLYEXCT2405:26-2406:5) (176JA157548:26-57549:5.) The absence of authority in the Physical Solution for the trial court to determine whether a future use of water is unreasonable is inconsistent with the finding in *City of Santa Maria, supra,* 211 Cal.App.4th at 288 that:

> [I]f a physical solution be ascertainable, the court has the power to make and should make reasonable regulations for the use of the water by the respective parties, provided they be adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction, *and in this connection the court has the power to and should reserve unto itself the* ***right to change and modify*** *its orders and decree as occasion may demand, either on its own motion or on motion of any party.*" (quoting *Peabody,* v. City of Vallejo (1935), 2 Cal.2d 351, 383-384, emphasis added.)

Finally, the Physical Solution provides no restrictions on how Production Rights are used in the future. The stipulating parties who were allocated water in the Physical Solution are required only to report the *amount* of their annual production to the Watermaster. (3REPLYEXCT2428:15-21)(176JA157571:15-21.) They are not required to report any other changes to their water usage. (*Ibid.*) Likewise, the Watermaster, in his annual report to the court, is not required to include the type of *use* each producer is making of the extracted water. (3REPLYEXCT2432:11-2433:5) (176JA157575:11-157576:5.) Therefore, any stipulating party may dramatically change its current uses to an unreasonable use in the future and/or transfer (sell) their allotment to a third-party who puts the water to an unreasonable use without reporting the change to the Watermaster or the court.

As Respondents acknowledge, citing *Barstow, supra,* 23 Cal.4th at 1240-1242, "Article X, section 2 provides that no water user has a protectable interest in the unreasonable use of water and all water rights may be limited to reasonable and beneficial use." (PRB p. 56.) Here, unquestionably, the permanent allocation creates a "protectable interest" in the potential unreasonable use of water

since the Physical Solution is devoid of any provision to access whether the use of the permanently allocated water remains reasonable in the future.

In summary, the permanent allocation of the NSY, especially with the absence of authority in the Physical Solution for the Watermaster Engineer, the Watermaster or the trial court to determine whether a future use of water by a Production Right holder has become unreasonable or non-beneficial, violates the California Constitution's reasonable and beneficial use doctrine.

III. THE CONDITIONS PLACED ON THE WILLIS CLASS MEMBERS' ABILITY TO PUMP GROUNDWATER ARE UNREASONABLE, VIOLATE STATE LAW WITH RESPECT TO DOMESTIC USE, AND ARE UNFAIR.

Even if the Court were to reject Appellant's argument that the 2015 Judgment is unlawful, the 2015 Judgment and Physical Solution should still be reversed or modified because trial court erred as a matter of law by imposing unreasonable and unfair conditions on the Willis Class members ability to pump groundwater from the basin in the future. These conditions further conflict with state law regarding the priority of domestic use of water.

A. The Unreasonable and Unfair Conditions Placed on the Willis Class Members' Ability to Pump Groundwater in the Future.

In order to obtain a right to pump groundwater, a member of the Willis Class must first submit an application to the Watermaster Engineer in accordance with the New Production Application Procedure of the Physical Solution. (3REPLYEXCT 2411:27-2412:2; 2428-2430 ¶18.5.13.) (176JA157554:27-157555:2; 157571:22-157573 ¶18.5.13.) The New Production Application Procedure consists of the following twelve steps:

1. Pay an application fee sufficient to recover all costs of application review, field investigation, reporting, hearing, and other costs of Watermaster Engineer;

2. Provide a written summary of quantity, source of supply, season of use, purpose of use, place of use, manner of delivery regarding new production;

3. Provide maps of new production activity;

4. Provide copy of any well permits, specifications, well-log reports, pump specifications, testing results, and water meter specifications;

5. Obtain written confirmation of all Federal, State, County, and Local use entitlements and other permits to commence production;

6. Obtain written confirmation from all government agencies that applicant has complied with all laws, rules, and regulations - including CEQA;

7. Prepare a water conservation plan, approved and stamped by a California engineer that production will meet best water management practices;

8. Prepare an economic impact report for the new production;

9. Prepare a physical impact report;

10. Provide a written statement from an engineer that new production will not cause material injury;

11. Provide written confirmation that applicant agrees to pay replacement assessment; and,

12. Provide any other report that may be required by Watermaster Engineer. (3REPLYEXCT2428-2430,¶18.5.13) (176JA 57571:22-157573, ¶18.5.13.)

The Physical Solution makes clear that the Watermaster retains sole discretion "to determine whether such a member has established that the proposed New Production is a reasonable and beneficial use in the context of other existing uses of Groundwater and then-current Basin conditions" and to grant or deny the application. (3REPLYEXCT 2412:4-9; 2429:1-2)(176JA157555:4-9; 157572:1-2.)

If, the Watermaster Engineer finds that an applicant has satisfied the twelve criteria specified in Paragraph 18.5.13.1, only

then may the Watermaster Engineer recommend approval of the application by the Watermaster board. (176JA157894:1-3.)[5]

However, there is no requirement that the five-member Watermaster board approve an application even if a Willis Class member has fulfilled all of the outlined conditions. Consequently, the decision as to whether any Willis Class member may pump groundwater is solely within the Watermaster's discretion. (3REPLYEXCT 2354:21-23) (176JA157478:21-23.) Even Respondents admit the procedure required by the Physical Solution leaves open the possibility that Appellants may be prevented from ever pumping any water. (PRB at p. 79.)

B. The Twelve-Step New Production Application Process Is Unreasonably Burdensome and Expensive.

The Supreme Court has repeatedly held that a trial court can enforce a physical solution without a party's agreement **so long as**

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[5] The Watermaster board is "a five (5) member board composed of one representative each from AVEK and District No. 40, a second Public Water Supplier representative ... and two (2) landowner Parties, *exclusive of* public agencies and *members of the Non-Pumper and Small Pumper Classes.*" (3REPLYEXCT2421:10-23) (176JA157564:10-23, emphasis added.) In other words, the Willis Class is not represented on the Watermaster board.

the physical solution does not unreasonably burden any party. (*Barstow, supra,* 23 Cal.4th 1224, 1250, *City of Lodi v. East Bay Municipal Util. Dist.* (1936) 7 Cal.2d 316, 341, emphasis added.)

In *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501 ("*Rancho Santa Margarita*"), the Court also held that in a physical solution, a water right holder could be required to incur a "reasonable expense" to exercise its water right but that **a water right holder "cannot be expected or required to endure an unreasonable inconvenience or to incur an unreasonable expense.**" (*Id.* at 561; emphasis added.)

Here, the requirements placed on the Willis Class members, particularly by steps five through twelve of the New Production Application Procedure, are both "unreasonably burdensome" and "unreasonably expensive."

Willis Class expert Mr. Stephen Roach, concluded that the New Production procedure "is extremely rigorous, the cost of which could more than offset the value gain the properties would achieve with water" and further noted that "[t]his process is also not a guaranteed path towards obtaining water, which could be denied for any number of reasons." (3REPLYEXCT1981)(173JA154507.) To make matters

worse, Appellants note the information yielded by steps five through twelve is not necessary for the Watermaster's management of the Basin in a manner consistent with the Physical Solution—particularly with respect to domestic use pumping. Appellants submit that there is no need for compliance with those steps for domestic use since the trial court found that domestic use pumping is reasonable. (3REPLYEXCT2394:3-8)(176JA157537:3-8.)

As shown, the requirement that Willis Class members comply with steps five through twelve of the New Production Application Procedure is unreasonably burdensome and expensive.

C. The Physical Solution's Twelve-Step New Production Application Procedure and the Imposition of a Replacement Assessment Fee on Domestic Pumping are Inconsistent with Water Code Sections 106 and 106.3 and are Unfair.

Section 106 of the Water Code states: "It is hereby declared to be 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." With regard to the human use of water, Section 106.3(a) of the Water Code states: "It is hereby declared to be the established policy of the state that every human being has the

right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

Under the Physical Solution, in order to pump any water for domestic uses, a Willis Class member must apply to the Watermaster. However, as previously noted, the New Production Application Procedure is unreasonable, unreliable and unnecessary if an application is for domestic use pumping. Moreover, even if an application is approved, the procedure allows the Watermaster to require a payment of a Replacement Water Assessment fee for domestic use pumping. (3REPLYEXCT2430:16-25)(176JA157573:16-25.)

Appellants submit the arduous and unreliable application process, coupled with the Watermaster's discretionary authority to disapprove domestic pumping and the requirement that Willis Class members pay a Replacement Water Assessment Fee for domestic use pumping, clearly conflicts with Water Code sections 106 and 106.3 which explicitly prioritize domestic uses of water as "the highest use of water" to which every human being has the right to affordably access.

Finally, the trial court, sitting as a court of equity, is obligated to ensure that a physical solution is fair. (*Rancho Santa Margarita, supra,* 11 Cal.2d at 560-561 ["to see that justice is done in the case"].) The unreasonable burdens and expenses placed upon the Willis Class to obtain water are patently unfair and are discriminatory. In contrast to the Willis Class, the Physical Solution permits domestic use pumping by the Wood Class members who are provided the right to claim domestic use priority under Water Code section 106. (3REPLYEXCT 2392:21-26)(176JA157535:21-26.) Moreover, as noted, the other overlying landowners and Purveyors are not required to comply with the requirements as a condition precedent to their pumping.

IV. IMPORTANT ASPECTS OF THE 2015 JUDGMENT ARE INCONSISTENT WITH THE 2011 JUDGMENT AND THEREFORE UNENFORCEABLE.

Beyond being consistent with California law, the 2015 Judgment must also be consistent with the terms and conditions of the court's 2011 Judgment which approved the Willis Class Settlement. This is required both by the terms of the 2011 Judgment and the doctrines of res judicata and law of the case.

As discussed in Appellants' Opening Brief, the 2015 Judgment and Physical Solution are primarily inconsistent with the 2011 Judgment in the following ways.

> **First,** the 2011 Judgment guarantees the Class "an Overlying Right to a correlative share of 85% of the Federally Adjusted Native Safe Yield for reasonable and beneficial uses on their overlying land free of any Replacement Assessment." (3REPLYEXCT 2541:11-13)(176JA157684:11-13.) By compar-ison, the 2015 Judgment and Physical Solution displaced the overlying and correlative groundwater rights of the Willis Class to the NSY and imposed a Replacement Water Assessment for all water pumped by the Class members. (3REPLYEXCT 2429:1-2) (176JA157572:1-2.)
>
> **Second,** the 2011 Judgment protects the Class's "overlying Right to a correlative share of 85% of the [native supply]" and limits the Purveyors' share "to 15% of the Basin's ... Native Safe Yield." (3REPLYEXCT 2541:6-7, 11-13) (176JA157684:6-7, 11-13.) Nevertheless, in the 2015 Judgment and Physical Solution, Purveyors were allocated a share far greater than the 15 percent they were allotted under the 2011 Judgment. (*See, infra*, IV.D.)
>
> **Third,** the 2011 Judgment guarantees the Willis Class's "right to recapture Return Flows from Imported Water...." (3REPLY EXCT2541:8-9)(176JA157685:8-9.) The 2015 Judgment and Physical Solution preclude the Willis Class members from receiving a right to return flows that result from *their* use of imported water which was carefully preserved in the 2011 Judgment. (3REPLYEXCT 2402-2403,¶5.2.1-5.2.2) (176JA 157545-57546¶¶5.2.1-5.2.2.)

In response, Respondents and Landowners twist and misrepresent the clear terms of the 2015 Judgment and Physical

Solution to argue they *are* consistent with the previous 2011 Judgment. (PRB at pp. 91-96; LORB at pp. 75, 85-91.) Their arguments are without merit.

Respondents' contention that the inconsistencies are not fatal fall into three basis categories:

1) The 2011 Judgment did not define the groundwater rights of the Willis Class;

2) The 2011 Judgment does not prohibit a scenario in which Willis Class's correlative share would be zero percent of the NSY; and

3) The 2011 Judgment contemplated payment of Replacement Assessment.

As discussed below, each of these points are incorrect and unpersuasive.

A. The 2011 Judgment Defined and Allocated the Willis Class Members' Correlative Rights to Their Portion of the NSY.

Respondents and Landowners erroneously argue the 2011 Judgment did not "determine[] the Class' correlative share of the Native Safe Yield" and "did not establish that the Class had overlying groundwater rights." (PRB at p. 97; LORB at p. 87.) Contrary to Respondents' position, the Willis Class Settlement expressly *defined* the overlying rights of the Willis Class as "an

Overlying Right to a correlative share of 85% of the Federally Adjusted Native Safe Yield for reasonable and beneficial uses on their overlying land free of any Replacement Assessment." (3REPLYEXCT2541:11-13) (176JA 157684:11-13.) The trial court also recognized that the 2011 Judgment includes "an agreed-upon ***allocation***[] between the [Purveyors] and the Willis Class..." (3REPLYEXCT:16 [trial judge's handwritten annotation], emphasis added) (176JA157483:16.) The 2011 Judgment was clear – the Willis Class was allocated 85 percent of the Federally Adjusted Native Safe Yield free of Replacement Assessment.

As among overlying landowners, the 2011 Judgment did not need to quantify the correlative share as by definition the dormant Willis Class landowners were not currently using any groundwater. (3REPLYEXCT2387:21-2388:6) (176JA157530:21-157531:6) The Class simply retained the right to use a share of the NSY in the future – "free of any replacement assessment" – if and when they chose to activate those rights.

Respondents and Landowners insist, however, that the NSY had to be allocated in specific quantities to all overlying landowners. (PRB at p. 72; LORB at p. 62, citing to 176JA157474 [Statement of

Decision at 16].) During the Phase Six trial, the Willis Class, as an overlying landowner, sought to quantify its future groundwater needs through expert Dr. Rodney Smith. Unfortunately, Respondents adamantly objected to Dr. Smith's testimony as irrelevant on the eve of the Phase Six trial. (46RT35320:9-19; 25321:11-16.)[6] Quantification of the Willis Class landowners' rights was also included in several of the Class's proffered alternative physical solutions, but Respondents also objected to the admission of the alternative physical solutions. (2REPLYEXCT1427:10-11)(131JA127842:10-11; 49RT26549.) Based on Respondents' objections, the trial court refused to allow Dr. Smith's testimony and refused to admit and consider this evidence. (49RT 26543:1-6.)

Now, on appeal, Respondents complain there was no "determin[ation of] the Class' correlative share of the Native Safe Yield" (LORB at p. 87) and that "there was no way for the trial court to determine how much water Appellants could reasonably use" (PRB at p. 77.) Generally, a party who causes evidence to be excluded

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6 Interestingly, Landowners now argue such evidence was highly relevant to the court's determination and quantification of the NSY. (PRB at p. 77; LORB at p. 87.)

by objecting to its admission cannot raise an issue on appeal based on the absence of that evidence. (*Kessler v. Gray* (1978) 77 Cal.App.3d 284, 290.)

Even without the expert opinions of Dr. Smith, the trial court expressly found the Willis Class does, in fact, possess correlative rights as overlying landowner. (176JA157483:25-26.) Therefore, Respondents' arguments are both inappropriate given their objections at trial and contrary to the record.

B. California's Proscription Against the Extinguishment of Overlying Water Rights Also Precludes The Physical Solution's Permanent Zero Allocation of NSY to the Class.

As a means of escaping the binding effect of the 2011 Judgment, Respondents argue that because the Willis Class's correlative share of the NSY *could be* zero under the 2011 Judgment, the Purveyors cannot be equitably estopped from stipulating to the Physical Solution. (LORB at pp. 92-93; PRB at p.89.)

For the reasons set forth above, California law clearly proscribes the total extinguishment of an overlying landowners' right to pump water in the future. (*Barstow*, supra, 23 Cal.4th at 1250; *Long Valley, supra,* 25 Cal.3d at 347, 358-359; *Tulare, supra,*

3 Cal.2d at 525; 530-531.) This is true no matter what the extinguishment is called; the proscription includes the extinguishment of overlying water rights (as in this case) by way of a permanent zero allocation.

Further, in the 2011 Judgment, Purveyors did not just agree not to extinguish rights of the Class members, they expressly agreed to "not take any positions or enter into any agreements that are inconsistent with the exercise of the Willis Class Members' Overlying Right to produce and use their correlative share of 85% of the Basin's Federally Adjusted Native Safe Yield." (3REPLYEXCT2541:13-16) (176JA 157684:13-16.) Thus, Purveyors were estopped from stipulating to the inconsistent Physical Solution at issue here.

C. The Replacement Water Assessment Fees in the 2015 Judgment and Physical Solution is Inconsistent With the 2011 Judgment.

Respondents argue that the 2015 Judgment is consistent "because the Class retains its fractional correlative water right even under conditions when the Class is not allocated a present share of the Native Safe Yield." (PRB at pp. 52-54; LORB at p. 88.)

Respondents' argument that the 2015 Judgment and Physical Solution are consistent with the 2011 Judgment is based on a blatant

recharacterization of the Physical Solution's extinguishment of the Class's correlative rights as merely a "zero-percent allocation" of the NSY coupled with the requirement Willis Class members pay Replacement Assessments for all water pumped. (LORB at p.108; PRB at p. 94-95.) Since the Physical Solution permanently allocated the entire NSY among the settling parties, the Willis Class's right to correlatively share in the NSY was not preserved. It was extinguished. The 2011 Judgment could not be any clearer as to the continued existence of the Willis Class's groundwater rights. The 2015 Judgment's elimination of those rights for the over 18,000 landowners is both inconsistent with the 2011 Judgment and patently unreasonable. No matter how it is characterized, the Physical Solution's treatment of the Class's rights is clearly not consistent with the letter and/or spirit of the Purveyors' earlier Settlement with the Class and resulting 2011 Judgment.

First, the 2015 Judgment's directive that the Willis Class members shall have a permanent correlative share of *zero percent* of the NSY directly contradicts with:

- The 2011 Judgment's guarantee of the Willis Class' "Overlying Right to a correlative share of 85% of the [NSY] for reasonable and beneficial uses on their

overlying land free of any Replacement Assessment." (3REPLYEXCT 25441:11-13) (176JA157684:11-13.)

- The 2011 Judgment's recognition that "Willis class members each have rights to produce groundwater from the Basin's Federally Adjusted Native Safe Yield." (3REPLYEXCT 2540:26-28) (176JA157683:26-28.)

- The provision of the 2011 Judgment reiterating that "[p]umping of the Settling Parties' share of Native Safe Yield is not subject to any Replacement Assessment." (3REPLY EXCT2538:1-2) (176JA157681:1-2.)

- The definition of "correlative rights" in the 2011 Judgment as a "fair and just proportion of the water available to the Overlying Owners." (3REPLYEXCT2536:26-2537:2) (176JA 157679:26-157680:2.)

Second, Respondents' reliance on the 2011 Judgment's Safe Harbor provision is misplaced. (PRB at p. 94; LORB at p. 46.) The Safe Harbor provision (which Respondents say provides that if "the court determines that the Willis Class members do ***not*** have Overlying Rights, Willis can have no right to pump") is simply not applicable here. As Respondents concede, the lower court specifically determined the Willis Class *does* have overlying rights. (PRB at p. 52, citing 175JA157474; LORB at 50, citing 176157484; (3REPLYEXCT2360:11-13) (176JA157484:11-13 ["As overlying landowners in an overdrafted basin, the members of the Willis Class

are entitled to a fair and just proportion of the water available to overlying landowners, i.e. a correlative right"], citations omitted.)

Third, Respondents' argument that the Willis Class agreed to pay Replacement Assessments for *any* future pumping (PRB at pp. 94-95; LORB at p. 46) is based on cherry-picked phrases from the 2011 Judgment and is wholly misleading. While the Willis Class recognized the need to bring the Basin into the NSY to preserve the aquifer for future use, the Class anticipated a fair, proportionate correlative share of the NSY which they (like the other overlying landowners) would not have to pay to replace. (3REPLYEXCT2541:11-13) (176JA157684:11-13) Of course, if they extracted water *beyond* their reasonable correlative share, they agreed to pay for it. (3REPLYEXCT2538:18-21) (176JA 157681:18-21.) The Willis Class did not agree to pay Replacement Assessments for the right to extract their correlative share of the NSY.

D. The Allocation of 23+ Percent of the Native Safe Yield to Purveyors is Also Plainly Inconsistent with the 2011 Judgment.

As noted above, the 2011 Judgment protects the Class's "overlying Right to a correlative share of 85% of the [native supply]" and limits the Purveyors' share "to 15% of the Basin's...Native Safe

Yield." (3REPLY EXCT2541:6-8 and 11-13) (176JA157684:6-8 and 11-13.)

Purveyors were allocated more than 15% and Purveyors do not address the excess allocation.

However, Landowners claim Purveyors' 12,345 acre-feet collective production right is about 15 percent of the NSY. (LORB at p. 47-45.) At first glance, the calculation seems reasonable. However, Landowners' calculation is wrong because it does not account for the unused Federal Reserved Right also allocated to the Purveyors. (3REPLYEXCT 2397:4-8; 2469)(176JA 157540:4-8; 176JA157612.) Therefore, the correct calculation of the Purveyors' allocated production right is as follows:

- The Federal Reserve Right of 7,600 minus the 1,350 acre-feet average annual groundwater actually used by the United States equals 6,250 acre-feet ***unused*** by the United States. (1REPLYEXCT358:7[United States 2011 pumping of 1246.09 and 2012 pumping of 1450.59 for an average of 1,350 acre-feet/year])(79JA75216:7.)

- Pursuant to paragraph 5.1.4.1, the 6,250 acre-feet is added to the 12,255 acre-feet allocated to the stipulating Purveyors,[7] providing Purveyors with a total of 18,505

[7] As Boron Community Services District and West Valley County Water District did not stipulate to the Willis Class Settlement, their allocations of 50 and 40 acre-feet of the Native Safe Yield were subtracted from the total 12,345 acre-feet provided collectively to the

acre-feet per a year. (3REPLYEXCT 2397:4-8; 2469) (176JA 157540:4-8; 176JA157612.)

- Dividing 80,950 (the NSY less the United States' average annual groundwater usage) into 18,505 equals **22.86 percent** of the NSY.

The 22.86 percent earmarked for Purveyors is well above (7.86 percent or 6,363 acre-feet/year of water) the agreed upon 15 percent. As such, the Physical Solution's allocation of groundwater is plainly inconsistent with the 2011 Judgment.

To make the discrepancy worse, under the Physical Solution's so-called "Drought Program" the Purveyors are "exempt from the requirement to pay Replacement Water Assessment" for production "in excess of their respective rights...up to a total of ***40,000 acre-feet***." (3REPLYEXCT2409:5-8, emphasis added.) (176JA157552:5-8) In other words, not only does the Purveyors' allocated portion of the NSY violate the 2011 Judgment's cap of 15 percent, it permits Purveyors to pump up to an extra 40,000 acre-feet for **free**, without having to replace that water given the drought conditions in the Antelope Valley.

Exhibit 3 Purveyors, leaving 12,255 acre-feet. (3REPLYEXCT2533-2534,¶I) (176JA157676-157677,¶I)

Purveyors attempt to justify their excess allocation by asserting that because they as appropriators provide water for domestic use in the Antelope Valley and because the water code provides that domestic use is the highest priority of water use, their allocation of the unused Federal Reserve Right is reasonable and they should not be faulted for violating the plain terms of the 2011 Judgment. (PRB at p. 67.)

There is no support in law for the Purveyors' excuse for violating the 2011 Judgment. In essence, the Purveyors are advocating the prioritization of appropriative domestic use over the Willis Class landowners' overlying right to domestic use. This argument is contrary to the Supreme Court's holding in *Barstow*:,:

> "[A]lthough 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*"], emphasis added.) Purveyors' argument necessarily fails because overlying rights are superior to appropriative use. (*Barstow*, *supra*, 23 Cal.4th at 1241.)
>
> "Proper overlying use ... is paramount and the rights of an appropriator, being limited to the amount of the surplus, must yield to that of the overlying owner in the event of a shortage." (*Id.*)

Therefore, the Purveyors' permanently allocated production right of more than 15 percent violates the clear terms of the 2011 Judgment.

E. The Physical Solution Eliminates Willis Class's Right to Return Flows Guaranteed by the 2011 Judgment.

For every acre-foot of water used in the Basin, approximately 40 percent of it filters through the soil and returns to the aquifer. (3REPLYEXCT2402:19-22)(176JA157545:19-22.) Therefore, for each one-acre foot of imported water purchased, the purchaser (whether a landowner or appropriator) receives 39 percent of free groundwater for domestic use or 34 percent for agricultural use as "return flow rights" for the replenishment of the aquifer with imported water. (*Id.*) These return flow rights from imported water are very valuable.

In the 2011 Judgment, the Willis Class was guaranteed the right to "recapture Return Flows from Imported Water that they put to reasonable and beneficial use in the Basin." (3REPLYEXCT2542:7-12) (176JA157685:7-12.)

The 2015 Judgment and Physical Solution strips the Willis Class of any rights to return flows resulting from the imported water

paid for by the Class and allocates all return flow rights to the stipulating parties. Even worse, in violation of a prior ruling by the trial court, the 2015 Judgment gifts all return flow rights to any imported water purchased by Willis Class members to the entity selling the imported water.[8] (3REPLYEXCT 2402:23-25; 2486-2487; 2403:16-19) (176JA 157545:23-25; 157629-157630; 157546:16-19.)

To confuse matters and makes their position more palatable to this Court, Respondents wrongly assert the Willis Class seeks the return flows that result from *other* parties' use of imported water. (LORB at p. 89.) This is patently false. The Willis Class only seeks

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[8] Under the provisions of the 2015 Judgment and Physical Solution, Purveyors and Landowner retained their rights to return flows. (3REPLYEXCT2402:23-25; 2486-2487; 2403:16-19) (176JA157545:23-25; 157629-157630; 157546:16-23.) In 2013, AVEK asserted a claim against Purveyors' return flow rights. (1REPLYEXCT360-416 [AVEK's Motion for Summary Adjudication of all Causes of Action Relating to Ownership of Return Flows](81JA78656-78712.) The trial court ruled in favor of Purveyors, holding that under California water law, AVEK, as a mere water broker, had no right to return flows from the water it sold. (1REPLYEXCT421:8-19)(89JA84705:8-19.) Nevertheless, the 2015 Judgment awards the Willis Class's return flows to AVEK. (3REPLYEXCT 2402:23-25 ["The right to produce Imported Water Return Flows from water imported through AVEK belongs exclusively to the Parties identified in Exhibit 8"]; 2486-2487 [Exhibit 8 which does not list the Willis Class]) (176JA157545:23-25; 157629-157630.)

to enforce its right to the return flow from any imported water its members might pay for and apply to their Basin properties in the future. (*See, City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 301; *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77.)

Since the Willis Class has been awarded a zero-percent allocation of the NSY, the Class members will not only have to pay for the purchase of imported water, but they are stripped of the normal return flow privileges afforded to every other user. This result is contrary to the trial court's previous finding recognizing that "the entirety of case law supports that proposition that water users who have imported the water into the basin and who have augmented the water in the acquifer [*sic*] through use are entitled rights to the amount of water augmenting the acquifer [*sic*]." (1REPLYEXCT420:17-20 ["Thus, 'one who brings water into a watershed may retain a prior right to it even after it is used"]; 421:14-16) (89JA84704:17-20; 84705:14-16.)

F. The 2011 Settlement and Judgment Prohibits the Use of Any Prescription Theory as a Basis for Conditioning, Extinguishing, or Otherwise Reducing the Willis Class's Groundwater Rights.

Landowners argue that the Willis Class "gave up 15 percent of the Class *members' claimed* correlative overlying rights" and that this somehow "was tantamount to a Willis Class admission that its members' rights, in fact, had been prescribed by the [Purveyors]." (LORB at pp.23; 47, emphasis added.) This is incorrect.

First, the Willis Class Settlement expressly states that "[t]his Stipulation shall neither be construed to recognize prescriptive rights nor to limit the [Purveyors'] prescriptive claims vis-à-vis the Basin or any non-settling parties..." (3REPLYEXCT2541:3-5)(176JA157684:3-5.) It further contained a release by the Purveyors regarding its prescription claims against the Willis Class. (3REPLYEXCT2546:6-21) (176JA 157689:6-21.) After the 2011 Judgment and the Purveyors' release of prescription claims, there were no claims of prescription threatening the groundwater rights of the Willis Class. (3REPLYEXCT2546:10-14) (176JA157689:10-14.)

Second, contrary to Landowners' assumption, the Class's stipulation to the Purveyors' use of 15 percent of the NSY cannot be read as any sort of admission regarding the Purveyors' prescriptive claims. The Willis Class Settlement contains a clause stating the settlement of claims should not be regarded as an "admission" of

liability or "concession" as to the merit of any claim." (3REPLYEXCT 2536:8-13) (176JA157679:8-13.)

Third, as discussed, there was no finding of prescription against the Willis Class. To the contrary, the trial court expressly recognized that the 2011 Judgment "eliminat[ed] the Public Water Suppliers' prescription claims." (1REPLYEXCT278:1-5) (13JA 15487:1-5.)

G. Purveyors' Assertion That The Judgments *Are*, In Fact, Consistent is Without Merit.

In addition to their other arguments, Purveyors argue that judgments *are* consistent.

First, Purveyors essentially argue the two judgments are consistent because the trial court retained unfettered discretion to eliminate the rights of the Willis Class to the NSY. In support of their argument, Purveyors refer to the trial court's November 18, 2010 order on Motion for Preliminary Approval to argue that the "physical solution cannot be limited by the Class Settlement." (PRB at p. 93, citing 9JA9817.) However, Purveyors' citation to the appendix does not contain the referenced language. Further, the referenced order long preceded entry of the 2011 Judgment, and

therefore could not affect the 2011 Judgment. Purveyors' interpretation would render meaningless the promise they made in the Willis Class Settlement and resulting 2011 Judgment that the Willis Class had an overlying right to correlatively share in the NSY. Even the Landowners, who also oppose this appeal, concede that "the 2015 Judgment must be consistent with the 2011 Judgment." (LORB at p. 75.)

Second, Purveyors argue the 2015 and 2011 Judgments are consistent because there is also a Replacement Water Assessments provision in the 2011 Judgment. (PRB at p. 94-95.) However, that provision only requires the Class members to pay a replacement assessment on any water pumped by them *in excess of* their fair correlative share of the NSY—not for *any and all* groundwater pumped. (3REPLYEXCT2541:11-14)(176JA157684:11-14.)

Third, Purveyors argue that because the Willis Class agreed in the 2011 Judgment to share 85 percent of the NSY with *other* overlying landowners, the zero-percent allocation to the Class in the 2015 Judgment is consistent. This is patently incorrect. Correlative rights was clearly defined in the 2011 Judgment as "the principle of California law, articulated in *Katz v. Walkinshaw* (1903) 141 Cal.

116 and subsequent cases, that Overlying Owners may make reasonable and beneficial use of the water in a Basin and that, if the supply of water is insufficient for all reasonable and beneficial needs, each Overlying Owner is entitled to a fair and just proportion of the water available to the Overlying Owners." (3REPLYEXCT2536:26-2537:2) (176JA 157679:26-157680:2; *see also, Tehachapi, supra,* 1001 ["As between overlying owners, the rights, like those of riparians, are correlative, i.e., they are mutual and reciprocal. This means that each has a common right to take all that he can beneficially use on his land if the quantity is sufficient; if the quantity is insufficient, each is limited to his proportionate fair share of the total amount available based upon his reasonable need"].)

Fourth, Purveyors claim two judgments are consistent because the 2011 Judgment did not guarantee the Willis Class an overlying right to correlatively share in the NSY and therefore, the later court-adopted Physical Solution did not have to recognize the Willis Class landowners' right in the NSY. (PRB at p. 95.) The Purveyors' position, if accepted, would again render the 2011 Judgment meaningless. The trial court expressly determined that the Willis Class does, in fact, have overlying rights and summarized the

significant impact of the Willis Class Settlement and 2011 Judgment, as follows:

> By eliminating the [Purveyors'] prescription claims and maintaining correlative rights to portions of the Basin's native yield, the Willis Class members ... protect[ed] their right to use groundwater in the future and to maintain the value of their properties.
>
> ...
>
> [The Settlement and 2011 Judgment] prevent[ed] the [Purveyors] from proceeding on their prescription claims and ... maintain[ed the Class's] ... correlative rights to the reasonable and beneficial use of water underlying their land.

(1REPLYEXCT278:1-5, 15-18)(13JA15487:1-5, 15-18.)

The trial court also noted, the Physical Solution, itself, "recognizes the Willis Class' share of correlative overlying rights..." (3REPLYEXCT 2359:25-26) (176JA 157483:25-26.)[9]

To summarize, neither the record nor the law supports Purveyors' attempts to argue the two judgments are consistent.

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[9] Interestingly, neither the promissory provisions of the Willis Class Settlement and 2011 Judgment nor the trial court's comments about the impact of the 2011 Judgment are acknowledged by Purveyors.

V. THE WILLIS CLASS LANDOWNERS' DUE PROCESS RIGHTS WERE VIOLATED.

Purveyors' discussion of the Willis Class's Due Process argument is nearly identical to that of the Landowners. The Class therefore refers to the counterpoints made in its Reply to the Respondents Brief filed by the United States. (Brief 3 of 3), and hereby incorporate that discussion in response to Purveyors' erroneous Due Process arguments.

VI. ALL OF APPELLANTS' ISSUES ARE RIPE.

Respondents argue that Appellants' "fundamental issue is that it may not be able to pump water without an assessment at some future time." Respondents argue that the issue as they frame it is not ripe because "[t]he time to decide this issue is when a future use arises, if ever, and Appellants disagree with the conditions placed on their groundwater production or are denied any groundwater production." (PRB at pp.112-115.)

Respondents' mischaracterize Appellants' fundamental issues. Appellants' primary issues are as follows:

> (1) The 2015 Judgment and Physical Solution improperly extinguished or subordinated the overlying rights of an entire class of dormant landowners;

(2) The 2015 Judgment and Physical Solution permanently allocated all of the Basin's water rights in violation of the reasonable and beneficial use doctrine;

(3) The 2015 Judgment and Physical Solution imposed conditions on any future pumping by Class members which are not only unreasonable, but also, violate the priority for domestic uses established by Water Code sections 106 and 106.3; and

(4) The trial court's 2015 Judgment is inconsistent with its prior 2011 Judgment; and The procedure adopted by the trial court to assess the inconsistencies in the two judgments and adopt a Physical Solution violated the due process rights of over 18,000 Willis Class members.

As Respondents correctly note the standard for ripeness is that the actual controversy must be one which relief can be definitively and conclusively provided by judgment—not an advisory opinion based upon a hypothetical state of facts. (PRB p. 113, citing *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 117.) Respondents also admit that a controversy is *ripe* "when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made." (*Id.* citing to *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22.)

Under these criteria, each of the issues raised by the Willis Class in this appeal is ripe for the Court's consideration in this appeal. Without question, none of issues raised by the Appellants is based upon a hypothetical state of facts and none of the issues calls for an advisory opinion. Also, without doubt, all of the issues have "sufficiently congealed to permit an intelligent and useful decision to be made."

Respondents then contend the Appellant's issues are not ripe because, under *Tulare,* a court cannot consider a future water use until the quantity of water needed for future reasonable and beneficial uses is fixed – i.e., until the need for such uses arises. (PRB p. 112, citing *Tulare, supra*, 3 Cal.2d. at 525.)

Here, of course, the issues raised by this case are much broader than the amount of a future water use by Appellants or whether such a future water use is reasonable and beneficial. Thus, even assuming *arguendo* that *Tulare* set a standard for when it is appropriate for the court to consider the reasonableness of a future water use, here, the issues in this case do not involve (nor are they are not limited to) the appropriateness of the Willis Class's future water use.

In further support of their ripeness argument, Respondents argue *City of Santa Maria v. Adam, supra,* 43 Cal.App.5th 152, also supports their argument that the issues here are not ripe. (PRB at p. 114.) *Santa Maria* involved a group of overlying landowners who sought judicial intervention and protection from a potential future claim of prescription. The court found that no hardship would result from not deciding the issues because:

> [T]he appropriate time to test the effect of the amended judgment on future prescriptive rights is when an actual controversy arises. As we have stated, there is no evidence in the appellate record of an overdraft or any asserted claims of prescription against appellants' overlying rights. There is merely a disagreement between the parties over how the amended judgment should be interpreted, and "courts will not intervene merely to settle a difference of opinion."

(*Santa Maria, supra,* 43 Cal.App.4th at 165.)

The *Santa Maria* case does not support Respondents' argument that this case is not ripe. Here, Appellants are protected from Purveyors' prescription claims and this case is not a simple disagreement between the parties over how the trial court's judgment should be interpreted. More importantly, Appellants will

be harmed if their non-speculative and more consequential issues are not decided. The issues in this case are ripe.

CONCLUSION

The Class refers to the conclusion in its Reply to the Landowner Respondents' Brief (Brief 1 of 3), and hereby incorporates the discussion of remand here.

DATED: 10/5/20

THE KALFAYAN LAW FIRM, APC

By: */s/ Ralph B. Kalfayan*
Ralph B. Kalfayan

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the accompanying APPELLANTS' REPLY TO PUBLIC WATER SUPPLIERS' RESPONDENT'S BRIEF (2 of 3) contains 12,920 words (including footnotes) as counted by the Corel Word 11 Program.

DATED: 10/5/20 THE KALFAYAN LAW FIRM, APC

By: */s/ Ralph B. Kalfayan*
Ralph B. Kalfayan

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 2262 Carmel Valley Road, Suite 200, Del Mar, California 92014.

October 5, 2020, I served true copies of the following document(s) described as APPELLANTS' REPLY TO PUBLIC WATER SUPPLIERS' RESPONDENT'S BRIEF (2 OF 3) (Willis Class Appeal) on the 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.

BY FEDERAL EXPRESS: I served a true and correct copy by Federal Express or other overnight delivery service, for the delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown below.

Honorable Jack Komar
c/o Rowena Walker
Complex Civil Case Coordinator
Superior Court of California, County of Santa Clara
191 N. 1st Street, Departments 1 and 5
San Jose, CA 95113

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

Executed on October 5, 2020, at Del Mar, California.

s/ Ralph B. Kalfayan
Ralph B. Kalfayan