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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

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| Coordination Proceeding<br><br>ANTELOPE VALLEY GROUNDWATER CASES,<br><br>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.<br><br>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.<br><br>Wm Bolthouse Farms, Inc. v. City of Lancaster<br><br>Diamond Farming Co. v. City of Lancaster<br><br>Diamond Farming Co. v. Palmdale Water District,<br><br>AND RELATED ACTIONS | Judicial Council Coordination Proceeding No. 4408<br><br>**OPPOSITION TO PUBLIC WATER SUPPLIERS' MOTION TO INTERPRET JUDGMENT AND RESPONSE TO WATERMASTER'S MOTION FOR ORDER INTERPRETING JUDGMENT**<br><br>Date: January 31, 2018<br>Time: 9:00 a.m.<br>Dept.: 222<br><br>The Hon. Jack Komar, Dept. 17<br>Santa Clara Case No. 105 CV 049053<br><br>Riverside County Superior Court<br>Lead Case No. RIC 344436<br>Case No. RIC 344668<br>Case No. RIC 353840<br>Los Angeles Superior Court Case No. BC 325201<br>Kern County Superior Court Case No. S-1500-CV-254348 |

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## I. INTRODUCTION

For the second time since entry of Judgment in January 2016, the Los Angeles County Waterworks District No. 40 ("District 40") and certain other Exhibit 3 public water supplier parties[1] ("Public Water Suppliers") seek to materially amend this Court's Judgment through the guise of "interpretation." Last time, the Public Water Suppliers unsuccessfully pitched an interpretation that would have allowed them to vote for Exhibit 4 landowner representatives on the Watermaster board. (March 6, 2017, Notice of Order.) This time, the Public Water Suppliers have filed a "Motion for Interpretation of Judgment" to evade paying their share of Replacement Water Assessments that the Watermaster needs to end overdraft and balance the Basin ("PWS Motion").

The PWS Motion asks the Court to confirm that Exhibit 3 Public Water Suppliers "are entitled to rampdown their production." (PWS Motion at 2.) That modest sounding request is misleading in its failure to acknowledge the real, underlying request to avoid paying Replacement Water Assessments on certain groundwater production exceeding the Non-Overlying Production Right value that Judgment Exhibit 3 specifies for each Public Water Supplier. The Court should reject the PWS Motion because:

- The Judgment does not give Exhibit 3 Public Water Suppliers Pre-Rampdown Production rights that are exempt from Replacement Water Assessments; and
- The Judgment prohibits Exhibit 3 Public Water Suppliers from "carrying over" any unused Federal Reserved Water Right.

The PWS Motion abandons a third argument presented to the Watermaster — evidently conceding that the Judgment prohibits Exhibit 3 Public Water Suppliers from "carrying over" the un-used portion of the alleged Pre-Rampdown Production rights that the Public Water Suppliers erroneously claim to have. Despite that, the Watermaster's Motion for Order Interpreting Judgment ("Watermaster Motion") raises this carryover question, even though the Watermaster's General Counsel has issued written opinions rejecting this carryover claim and all the other Judgment "interpretations" now alleged in the PWS Motion. The Court should deny the PWS Motion for all

[1] The moving parties include: Palmdale Water District, Rosamond Community Services District, Quarter Hill Water District, Littlerock Creek Irrigation District, and Palm Ranch Irrigation District.

the reasons articulated in the Watermaster Counsel's written opinions.

The Court also should deny the PWS Motion because it undermines the Watermaster decisionmaking process. The PWS Motion asks this Court to consider arguments and evidence not provided to the Watermaster in a transparent process available to all parties. Instead, the Public Water Suppliers privately lobbied the Watermaster and its staff with non-public communications — including a letter erroneously labeled "CONFIDENTIAL Attorney/Client Privilege" — that prevented other parties from responding before the Watermaster took action. When the Watermaster took action, by directing its Counsel to file a neutral motion presenting "both sides," the administrative record documenting the Watermaster's decisionmaking process was constrained by excluding the two publicly circulated Watermaster Counsel opinions concluding the Public Water Suppliers' pitch conflicts with the Judgment and would increase overdraft. Just because this Court performs de novo review to interpret the Judgment does not excuse the Public Water Suppliers' attempt to short-circuit the Watermaster's decisionmaking process and this Court's review.

The Court should deny the PWS Motion.

## II. PROCEDURAL BACKGROUND

The Watermaster considered the Public Water Suppliers' Judgment interpretation theories at its October 25, 2017, board meeting. The meeting agenda and relevant agenda package documentation is provided as Exhibit 3 to the Request for Judicial Notice and Supporting Declaration of Stanley Powell ("RJN"). The agenda package includes two Watermaster Engineer memoranda. One describes technical and practical difficulties with calculating Pre-Rampdown Production right values for Exhibit 3 Public Water Supplies: "The methodology proposed by the Public Water Suppliers does not appear to be fully consistent with the Pre-Rampdown Production definition in the Judgment . . . ." (December 1, 2017 Watermaster Engineer Memorandum re Pre-Rampdown Production Rights at 3, attached as RJN Exh.3 at CLA_0024-0030.)

The Watermaster considered the Public Water Suppliers' interpretation theories at its November 15, 2017, board meeting. The meeting agenda and relevant agenda package documentation are provided as RJN Exhibit 4. The agenda package includes written comments and related documentation from the Watermaster's Advisory Committee. At this meeting, the

Watermaster directed its General Counsel to review the Public Water Suppliers' Judgment interpretation theories and to provide a written evaluation for the next Watermaster meeting.

The Watermaster again considered the Public Water Suppliers' theories at its December 6, 2017, board meeting. The meeting agenda and relevant agenda package documentation are provided as RJN Exhibit 5. The agenda package includes two memoranda prepared by the Watermaster Counsel, along with some, but not all, additional written comments received by the Watermaster. The two General Counsel memoranda provide a detailed analysis of the Public Water Suppliers' Judgment interpretation theories and conclude they conflict with the Judgment.

With respect to the Public Water Suppliers' theory claiming Pre-Rampdown Production rights to evade the Replacement Water Assessment, the General Counsel concluded:

> No. The Judgment and Physical Solution are clear that only those Parties listed on Exhibit 4 have Pre-Rampdown Production rights other than their Production Rights. This conclusion is consistent with the plain language of the Judgment which was the result of extensive negotiations over many years whereby the Parties bargained at arm's length for various rights and obligations that they may not have had as a strict matter of law.
>
> To amend the Judgment to provide for (and calculate) a Pre-Rampdown Production right for Parties not listed on Exhibit 4 is to materially amend the Judgment without a sufficient factual or legal basis on which to do so and will contribute to Overdraft conditions, as defined in the Judgment, during the Rampdown Period.

(December 4, 2017, Watermaster Counsel Opinion Memorandum re Pre-Rampdown Production Rights at p. 2, provided as RJN Exhibit 5 at CLA_0081-0092.)

With respect to the Public Water Suppliers' theory extending "Carry Over" rights to their newly claimed Pre-Rampdown Production rights and to their access to any unused portion of the Federal Reserved Water Right, the General Counsel concluded:

> No. The right to Carry Over during the Rampdown Period does not apply to Pre-Rampdown Production amounts that exceed a Party's Production Right."

(December 4, 2017, Watermaster Counsel Opinion Memorandum re Carry Over Rights at p. 3, provided as RJN Exhibit 5 at CLA_0114-0123.)

The Watermaster deliberated and passed a motion directing its General Counsel to file a motion asking the Court to review the Public Water Suppliers' interpretation theories but to withhold from the Court the two written legal memoranda that had been publicly circulated as part of the

Watermaster's December 6 meeting agenda package, unless the Court requested the memoranda.

A day after the December 6 Watermaster meeting, the Watermaster Counsel produced a November 22, 2017, letter that Public Water Supplier attorney Keith Lemieux had submitted to the Watermaster ("Lemieux Letter") (RJN Exhibit 6 at CLA_0126-0128). The Lemieux Letter was marked "CONFIDENTIAL Attorney/Client Privilege" — without any reasonable basis to make a claim of privilege. Although the Lemieux Letter had not been provided to the Watermaster Advisory Committee and was excluded from the Watermaster's December 6 meeting agenda package, it apparently was considered by the Watermaster and its General Counsel, whose December 4 legal memorandum rejected all the Lemieux Letter's theories.

Two weeks after the Watermaster took action at its December 6 meeting, Public Water Supplier attorney Doug Evertz, on December 20, 2017, sent an email ("Evertz Email") to the Watermaster Counsel presenting new information. Together, the Evertz Email and the PWS Motion present the following theories and evidence to support the Public Water Suppliers' claims for Pre-Rampdown Production rights and expanded Carry Over rights:

- New argument that certain Dennis Williams trial testimony supports Pre-Rampdown Production rights for Exhibit 3 Public Water Suppliers;
- New argument that Article X, Section 2 of the California Constitution requires that the Public Water Suppliers have the right to Carry Over the unused portion of the Federal Reserved Water Right; and
- New argument that absence of a right to Carry Over the unused portion of the Federal Reserved Water Right nullifies the Public Water Suppliers' right to that unused portion under Judgment Section 5.1.4.1.

The Evertz Email and enclosures are attached as Exhibit C to the Watermaster Motion. Although the theories articulated by Evertz and the PWS Motion were delivered after the Watermaster Counsel issued its memoranda, the memoranda analysis effectively rebut them all.

## III. STANDARD TO REVIEW JUDGMENT INTERPRETATION CLAIMS

The stipulated Judgment "must be construed like any other contract," (PWS Motion at 3), and is like a fully integrated agreement. When a material term is allegedly omitted from an integrated agreement, the Court may not admit extrinsic evidence of a contradictory term in a prior written or contemporaneous oral agreement. (Code Civ. Proc. § 1856(a).) "The language of a

contract is to govern its interpretation if the language is clear and explicit, and does not involve an absurdity" (Civil Code § 1638) and "[w]hen a contact is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible" (Civil Code § 1639; *Pierce v. Merrill* (1900) 128 Cal. 464, 472). An interpretation must make the agreement "lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intentions of the parties" (Civil Code § 1643.) Under that standard, the PWS Motion should be denied.

## IV. ARGUMENT

### A. Only Exhibit 4 Landowner Parties Have A Pre-Rampdown Production Right

The Watermaster Counsel got it right when it concluded that: "The Judgment and Physical Solution are clear that only those Parties listed on Exhibit 4 have Pre-Rampdown Production rights other than their Production Rights." (RJN Exh. 5 at CLA_0083.) The Watermaster Counsel also got it right when it concluded that: "To amend the Judgment to provide for (and calculate) a Pre-Rampdown Production right for Parties not listed on Exhibit 4 is to materially amend the Judgment without a sufficient factual or legal basis on which to do so and will contribute to Overdraft conditions, as defined in the Judgment, during the Rampdown Period." (*Ibid.*)

#### 1. The Judgment's Specification Of Pre-Rampdown Production Right Values For Exhibit 4 Landowners But Not For Exhibit 3 Public Water Suppliers Shows The Public Water Suppliers Have No Pre-Rampdown Production Rights

Judgment Section 3.5.26 defines "Overlying Production Rights" as "[t]he rights held by the Parties identified in Exhibit 4, attached hereto and incorporated herein by reference." Section 5.1.1 states: "The Parties listed in Exhibit 4, attached hereto and incorporated herein by reference, have Overlying Production Rights. Exhibit 4 sets forth the following for each Overyling Production Right: (1) the Pre-Rampdown Production; (2) the Production Right; and (3) the percentage of the Production from the Adjusted Native Safe Yield." Exhibit 4 lists the parties with Overlying Production Rights and for each landowner specifies the "Pre-Rampdown Production" right value as identified in Section 5.1.1.

In contrast, Section 3.5.21 defines "Non-Overlying Production Rights" as "[t]he rights held by the Parties identified in Exhibit 3, attached hereto and incorporated herein by reference." Section

5.1.6 states: "The Parties listed in Exhibit 3 have Production Rights in the amounts listed in Exhibit 3." Exhibit 3 fails to specify any "Pre-Rampdown Production" value, and Section 5.1.6 fails to list "Pre-Rampdown Production" as part of an Exhibit 3 Non-Overlying Production Right.

Exhibit 3 specifies all parts of a Public Water Supplier's Non-Overlying Production Rights as defined by Section 5.1.6, including a Non-Overlying Production Right value expressed in acre-feet per year and as a percentage of the Adjusted Native Safe Yield. Exhibit 3 does not specify any Pre-Rampdown Production right values, because Section 5.1.6 does not define Pre-Rampdown Production as part of an Exhibit 3 Public Water Supplier's rights.

A plain reading of the Judgment shows Exhibit 3 Public Water Suppliers have no Pre-Rampdown Production rights. The Court should deny the PWS Motion.

**2. The Public Water Suppliers' Argument For A Pre-Rampdown Production Right To Evade Replacement Water Assessments Depends On A Strained Syllogism That Conflicts With The Judgment**

The PWS Motion attempts to build a syllogism starting with Judgment Section 8.3's Reduction of Production During Rampdown: "During the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each **Party** may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments, from its Pre-Rampdown Production to its Production Right . . . ." (Judgment § 8.3 [emphasis added]). From there, the PWS Motion cites the Judgment's definition of "Party" to mean "any Person(s) that has . . . become subject to the Judgment," and cites the definition of "Producer" to mean "[a] Party who Produces Groundwater." From there, the PWS Motion argues that each Exhibit 3 Public Water Supplier "unequivocally" has a Pre-Rampdown Production right, because each is "both a 'Party' and a 'Producer' within the meaning of Section 8.3." (PWS Motion at 3.) Not so.

That syllogism breaks under the obligation to interpret the Judgment as a whole, and by comparing the plain meaning of Sections 3.4.26 and 5.1.1 defining attributes of Exhibit 4 Overlying Production Rights (specifying Pre-Rampdown Production rights) to Sections 3.5.21 and 5.1.6 defining attributes of Exhibit 3 Non-Overlying Production Rights (no Pre-Rampdown Production rights).

The syllogism also conflicts with the Public Water Suppliers' prior position on the meaning of Section 8.3's provision that "[d]uring the first two Years of the Rampdown Period no Producer will be subject to a Replacement Water Assessment." The Public Water Suppliers have previously argued the mere fact that a Party "falls under the definition of 'Producer' is not sufficient to demonstrate the Party is not subject to a Replacement Water Assessment in the first two Years of the Rampdown Period, but instead that *language must be interpreted in the context of other language in the Judgment*." (See August 17, 2017 letter to Watermaster on behalf of the Public Water Suppliers, attached as RJN Exhibit 7 [emphasis added.]) Agreed.

Recognizing their syllogism's failure to square with the rest of the Judgment, the PWS Motion quotes Section 3.5.28's definition of "Pre-Rampdown Production" to mean "[t]he reasonable and beneficial use of Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the Production Right, whichever is greater." (PWS Motion at 4.) From there, the PWS Motion erroneously concludes that the absence of an expressly exclusive reference to Exhibit 4 in the definition of "Pre-Rampdown Production" can only mean that Exhibit 3 Public Water Suppliers must have "Pre-Rampdown Production" rights too. But that theory fails, too, because Section 5.1.6's definition of Exhibit 3 Production Rights and Exhibit 3's specification of Production Right values fail to expressly (or impliedly) include Pre-Rampdown Production rights or value.

A plain reading of the Judgment as a whole shows Exhibit 3 Public Water Suppliers have no Pre-Rampdown Production rights. The Court should deny the PWS Motion.

### 3. The Public Water Suppliers' Claim For Pre-Rampdown Production Rights Threatens Practical Judgment Implementation Problems

The Public Water Suppliers' claim for Pre-Rampdown Production rights ignores the thousands of other Parties that could use the same argument to claim their own Pre-Rampdown Production rights. Meanwhile, the PWS Motion ignores practical problems arising from any attempt to determine Pre-Rampdown Production right values for Exhibit 3 Public Water Suppliers:

- The Judgment does not authorize and direct the Watermaster or Watermaster Engineer to make these determinations, so no one is qualified to determine new Pre-Rampdown Production right values.

- Section 3.5.28's definition of Pre-Rampdown Production provides a conceptual description of Pre-Rampdown Production but no useable formula, so Pre-Rampdown Production right values cannot be determined for Exhibit 3 Public Water Suppliers.

- The Watermaster Engineer and Counsel have been unable to determine a formula from the relationship between the Exhibit 4 landowner parties' Pre-Rampdown Production rights and their Production Rights — because these values were the product of a negotiation, not a formula — so any new determination of Pre-Rampdown Production right values for Exhibit 3 Public Water Suppliers would have to be negotiated among the Parties as an amendment to a Judgment that is on appeal.

- Using Administrative Assessment revenue to pay any Watermaster Engineer or Counsel work to determine Pre-Rampdown Production right values for Exhibit 3 Public Water Suppliers would be unfair to Exhibit 4 Parties that negotiated their Pre-Rampdown Production right values on their own dime for use in the Judgment.

The absence of reasonable solutions to such problems and inequities shows the Public Water Suppliers' newest Judgment interpretation pitch conflicts with the Judgment and was not intended and anticipated as a mere "interpretation" issue. The Court should deny the PWS motion.

**4. The Public Water Suppliers' Conduct Shows Their Claim For Pre-Rampdown Production Rights Arose *After* Entry Of Judgment**

The Exhibit 3 Public Water Suppliers' claim for Pre-Rampdown Production right seeks to evade Replacement Water Assessments that will be applied for the first time in 2018. Despite knowing this was coming since entry of Judgment in December 2015, the Public Water Suppliers have failed to position the Watermaster to implement Replacement Water Assessments for Exhibit 3 Public Water Suppliers in light of their claimed Pre-Rampdown Production rights. For example:

- The scope of services for the Watermaster Engineer contract does not provide for determination of Pre-Rampdown Production values (RJN Exhibit 8).

- The Public Water Suppliers' Watermaster representative proposed draft Watermaster Rules and Regulations in 2016 that omit any reference to Exhibit 3 Public Water Suppliers having Pre-Rampdown Production rights (RJN Exhibit 9).

Meanwhile, the Public Water Suppliers' evolving arguments have been inconsistent:

- The Public Water Suppliers' initially described their theory to the Watermaster Engineer as determining Pre-Rampdown Production values based on the average of the 2011 and 2012 Production amounts for Parties as given in the Partial Decision for the Phase 4 trial (RJN Exhibit 2 at CLA_0008-0020).

- After learning that the preceding method fails to reproduce many of the Pre-Rampdown Production values for Exhibit 4 landowners, the Public Water Suppliers changed approach and told the Watermaster that the Judgment intended for the Watermaster Engineer to *adjust* the 2011-2012 Production amounts from the Phase

4 trial to reflect Imported Water Return Flows (see Watermaster Motion at 10:7-12).

- The November 22, 2017, Lemieux Letter does not explain how Pre-Rampdown Production values are to be computed or made consistent with existing values in Exhibit 4, beyond asserting that "the question now is simply an engineering one," and that "[t]he Non-Overlying Producers will work with the Watermaster Engineer to establish these numbers as quickly as possible" (RJN Exhibit 6 at CLA_0127).

- The Evertz Email (Exhibit C to the Watermaster Motion) and the PWS Motion argue that the Williams trial testimony "show that the Public Water Suppliers having a collective Pre-Rampdown pumping allocation of 40,450.02 afy, *including the unused federal reserve right*" — marking the first time the Public Water Suppliers seek to include some portion of the United States' Federal Reserved Water Right to define a Pre-Rampdown Production right value for Exhibit 3 Public Water Suppliers.

The Public Water Suppliers' shifting positions belie their argument that the Judgment's plain language requires a straightforward determination of Pre-Rampdown Production right values for the Exhibit 3 Public Water Suppliers after entry of the Judgment. The PWS Motion should be denied.

**5. The Williams Testimony Addressed General Groundwater Modeling Assumptions — Not Whether Exhibit 3 Public Water Suppliers Have Pre-Rampdown Production Rights That Avoids Replacement Water Assessments**

The Public Water Suppliers argue their Pre-Rampdown Production interpretation is based on the plain language of the Judgment, but the 40,450.02 acre-foot Pre-Rampdown Production Value they propose is not based on the Judgment – it is based on the Williams Phase 6 trial testimony. The Public Water Suppliers argue the Williams testimony shows all Stipulating Parties intended Exhibit 3 Public Water Suppliers to have Pre-Rampdown Production rights under the Judgment. (*See* PWS Motion, fn.4 at 4.) But the PWS Motion fails to cite any testimony about Pre-Rampdown Production rights or their effect on Replacement Water Assessments.[2]

Instead, Williams provides a generalized description of how basinwide groundwater production was expected to "ramp down" under the proposed Judgment. The terminology used by Williams and District 40 counsel Jeff Dunn (who conducted the direct examination) refers to "ramp

[2] The PWS Motion also fails to acknowledge that the Williams testimony was to determine whether "the physical solution would in fact present a solution which could bring the basin back into balance." (Williams testimony at 25336:7-11.) The Williams exhibits were intended purely demonstrative (25337:17-22), and not accepted into evidence (25325:22-25 and 25326:22-23).

down" to mean "a reduction in pumping . . . to the native safe yield value of 82,300 [acre-feet]" (Williams testimony at 25336:25-28, attached as Exh. C to Watermaster Motion.) In contrast, the Judgment defines "Rampdown" as "[t]he period of time for Pre-Rampdown Production to be reduced to the Native Safe Yield in the manner described in this Judgment" (Section 3.5.37) — *but where reducing Pre-Rampdown Production only reduces the pumping exempted from Replacement Water Assessments under Section 8.3 of the Judgment. Without full payment of Replacement Water Assessments, the Rampdown won't work.*

The Williams testimony shows that his model's Pre-Rampdown Pumping Assumption for the Public Water Suppliers is 40,450.02 acre-feet per year. But nothing Williams said refers to Exhibit 3 Public Water Suppliers having any Pre-Rampdown Production right values affecting the Public Water Suppliers' Replacement Water Assessment obligations. Instead, Williams explains certain assumptions made by the computer model used to assess whether implementation of the proposed Judgment would balance the Basin. And one of those assumptions was the level of existing groundwater pumping preceding the expected ramping down of pumping from Judgment implementation. Slide 44 (Exhibit 1 attached hereto, taken from PWS Motion, Exhibit E) shows Exhibit 4's Pre-Rampdown Production rights for landowners were the only Pre-Rampdown Pumping Assumption that was based on the Judgment. Williams says nothing that shows the Production amounts he assumed for the Pre-Rampdown Period reflect any stipulating Parties agreement that Exhibit 3 Public Water Suppliers would have Pre-Rampdown Production right values reducing their Replacement Water Assesment obligations. In fact, adding Pre-Rampdown Production right values to the Judgment's Exhibit 3 would eliminate an incentive for Public Water Suppliers to keep their production under their specified Exhibit 3 Production Right values — and deprive the Watermaster of revenue for Replacement Water to balance the Basin.

Section II.D of the PWS Motion boldly argues Exhibit 4 landowners "cannot now disavow the evidence that they presented to the court and they are estopped from contesting the Public Water Suppliers' rampdown." But that argument mischaracterizes the Williams testimony, which only refers to Exhibit 4 landowners as having Pre-Rampdown Production rights and does not at all address how the Exhibit 3 Public Water Suppliers' new claim for Pre-Rampdown Production right

values would reduce their Replacement Water Assessment obligations. The estoppel argument should be rejected along with the entire PWS Motion.

### 6. The Public Water Suppliers' Claim To A "Collective Pre-Rampdown Production" Value of 40,450.02 Acre-Feet Conflicts With The Judgment's Definition of Pre-Rampdown Production

The Public Water Agencies' claim for a Pre-Rampdown Production right value of 40,450.02 acre-feet based on Williams' Slide 44 (Exhibit 1) conflicts with Judgment Section 3.5.28 definition of Pre-Rampdown Production to mean "The reasonable and beneficial use of Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the Production Right, whichever is greater." (Judgment, § 3.5.28.)

First, Slide 44 shows that the 40,450.02 acre-foot amount includes Groundwater Production presented in the Partial Decision for the Phase 4 trial. The Partial Decision (RJN Exhibit 2 at CLA_0015-0020) presents amounts of Groundwater Production which include Imported Water Return Flows. Including Imported Water Return Flows conflicts with the Judgment Section 3.5.28 definition of Pre-Rampdown Production as "excluding Imported Water Return Flows" and would inflate the Public Water Suppliers' Pre-Rampdown Production right values and evade more of their Replacement Water Assessment obligation.

Second, Slide 44 shows that the 40,450.02 amount includes estimated amounts that the Public Water Suppliers could Produce based on the unused portion of the 7,600 acre-foot Federal Reserved Water Right. The vast majority of the Federal Reserved Water Right was never used prior to the Judgment, so including that unused amount in the Public Water Suppliers' Pre-Rampdown Production conflicts with the Judgment Section 3.5.28 definition of Pre-Rampdown Production as "a reasonable and beneficial use of Groundwater . . . *at a time prior to this Judgment*" (emphasis added). The PWS Motion conflicts with the Judgment and should be denied.

## V. THE JUDGMENT DOES NOT ALLOW PUBLIC WATER SUPPLIERS TO CARRY OVER THE UNUSED PORTION OF THE FEDERAL RESERVED WATER RIGHT OR ANY PRE-RAMPDOWN PRODUCTION EXCEEDING A PARTY'S PRODUCTION RIGHT

The Watermaster Counsel got it right when it concluded: "The right to Carry Over during the Rampdown Period does not apply to Pre-Rampdown Production amounts that exceed a Party's

Production Right." (RJN Exh. 5 at CLA_0117.) The Watermaster Counsel also got it right when it concluded: "[T]he intentions of the Parties are clear from the language of the Judgment. The Judgment is certainly operative and is capable of being carried into effect by the conclusion that Carry Over was only to apply to the unproduced or unused portion of a Party's Production Right or Right to Imported Water Return Flows and was not intended to apply to Production in **excess** of those rights but less than a Party's Pre-Rampdown Production right." (*Id.* at CLA_0119.)

### A. The Judgment Specifies The Rights Available For Carry Over And Excludes Pre-Rampdown Production Rights And Federally Reserved Water Rights

The PWS Motion erroneously argues that each Public Water Suppliers' eligibility to produce the unused amount of the Federal Reserved Water Right in any Year is part of "its Production Right" in Judgment Section 15.3 and, therefore, can be Carried Over. (PWS Motion at 8-9.) But Section 5.1.4.1 of the Judgment excludes the Federal Reserved Water Right from Carry Over and expressly prohibits an Exhibit 3 Public Water Supplier from counting its use of any unused Federal Reserved Water Right as part of its Exhibit 3 Production Right (which can be Carried Over).

Section 15.3 of the Judgment states in part that: "If a Producer identified in Paragraph 5.1.1, 5.1.5 and **5.1.6** [Non-Overlying Production Rights] fails to Produce its full Production Right in any Year, the Producer may Carry Over its right to the unproduced portion of its Production Right for up to ten (10) Years." (Emphasis added.) Section 5.1.6 encompasses the Public Water Suppliers, so each Public Water Supplier is entitled to "Carry Over its right to the unproduced portion of <u>its Production Right</u>" specified in Exhibit 3 (emphasis added).

Judgment Section 3.5.9 defines "Carry Over" as "[t]he right to Produce an unproduced portion of an annual Production Right or a Right to Imported Water Return Flows in a Year subsequent to the Year in which the Production Right or Right to Imported Return Flows was originally available." Section 15.1 adds "In Lieu Production" as a third type of right entitled to Carry Over. The Judgment does not say any other type of right is entitled to Carry Over, and makes no mention of Carry Over applying to the Federal Reserved Water Right.

Judgment Section 5.1.4 defines "Federal Reserved Water Right" to mean that "the United States has a right to Produce 7,600 acre-feet per Year form the Native Safe Yield as a Federal

Reserved Water Right for use for military purposes at Edwards Air Force Base and Air Force Plant 42. . . ." and specifies that "[t]he United States may Produce any or all of this water . . . ." The Judgment allows Non-Overlying Producers, like the Exhibit 3 Public Water Suppliers, to produce any unused portion of the Federal Reserved Water Right, but specifies that "this Production of unused Federal Reserved Water Right Production does not increase any Non-Overlying Production Right holder's decreed Non-Overlying Production Right amount or percentage." (Judgment, § 5.1.4.1.) The PWS Motion's argument to Carry Over the unused portion of the Federal Reserved Water Right conflicts with all the preceding Judgment sections and should be denied.

The treatment of the Federal Reserved Water Right with respect to Administrative Assessments in Judgment Section 9.1 also shows no Party may Carry Over unused Federal Reserved Water Right. Section 9.1 seeks to ensure that all Production is subject to the Administrative Assessment. (Judgment, § 9.1.) Administrative Assessments are not imposed on Production of Carry Over water, but are generally imposed on the total Production Right and Imported Water Return Flow Right (i.e., rights entitled to Carry Over) in each year they accrue, regardless of whether the entire right is actually Produced in that year. Imposing the Administrative Assessments on the amount of the right, rather than actual production, "pre-pays" the Administrative Assessment to cover later production of any Carry Over arising from partial use of these rights. The United States cannot generate Carry Over on its Federal Reserved Water Right, and the express limitation that Administrative Assessments only apply to actual Production of the Federal Reserved Water Right is consistent with the inability to Carry Over this water. Section 9.1's similar limitation that Public Water Suppliers are only subject to Administrative Assessments on the amounts actually Produced pursuant to Paragraph 5.1.4.1 shows Public Water Suppliers cannot Carry Over the unused portion of the Federal Reserved Water Right.

### B. The Judgment's Plain Meaning Does Not Nullify Section 5.1.4.1 Or Violate Article X, Section 2 Of The California Constitution

The Public Water Suppliers erroneously contend that excluding the Federally Reserved Water Right from Carry Over nullifies their ability to use Judgment Section 5.1.4.1 and violates Article X, section 2 of the state Constitution. The Public Water Suppliers' access to unused Federal

Reserved Water Rights under Section 5.1.4.1 is a valuable asset that can provide significant additional water now and in the foreseeable future.[3] The Watermaster Counsel analyzed and rejected these theories, concluding that unproduced water "remaining in the Basin for the reasonable and beneficial use of all Producers" certainly "does not result in waste or unreasonable use of Groundwater in violation of statutory or constitutional provisions." (Watermaster Counsel Memo re Carry Over Water Rights, attached as RJN Exh. 5 at 0120.)

## VI. CONCLUSION

After analyzing the Public Water Suppliers' latest Judgment interpretation theories, the Watermaster Counsel concluded:

> This landmark litigation did not lack for forceful advocates and experienced water lawyers. To now amend an otherwise operative Judgment is both legally unsupportable and an act clearly outside the jurisdictional authority of the Watermaster. . . .
>
> Where the Parties apparently bargained and negotiated for a result that is clearly and readily enforceable and which comports with statutory and constitutional requirements to not promote waste and unreasonable use in excess of the Native Safe Yield, this [Watermaster] Board should not seek (two Years later) to renegotiate and change one of the fundamental aspects of the stipulated to agreement. In short, the Public Water Suppliers received other benefits (e.g., entitlement to the unproduced Federal Reserved Water Right, to Imported Water Return Flows, and to the offsetting benefits that come from participation in the Drought Program and the benefits of the In Lieu Production Right Carry Over, etc.), while the Overlying Producers received similar concessions (e.g., a Rampdown Period). We also note that all Parties within these two Producer classes received the exact same right to Carry Over Groundwater to the extent that such Groundwater is less than that Party's Production Right.

(RJN Exh. 5 at CLA_0122.) For all the preceding reasons, the PWS Motion should be denied.

DATED: January 18, 2018

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

By: Stanley C. Powell

Stanley C. Powell
Attorneys for City Of Los Angeles and
Los Angeles World Airports

[3] Note that Dr. Williams testimony for the Phase 6 trial essentially assumed that about 6,251 acre-feet would be available to the Public Water Suppliers over the entire period covered by his groundwater model (Williams Testimony at 25388:28 to 25389:16).

DATED: January 18, 2018

LeBEAU-THELEN

By: Stanley C. Powell for
Bob Joyce
Attorneys For Diamond Farming, Grimmway Enterprises, Inc., Crystal Organig Farms and Lapis Land Co.

DATED: January 18, 2018

KUHS & PARKER

By: Stanley C. Powell for
Robert Kuhs
Attorneys for Tejon Ranchcorp and Tejon Ranch Company

DATED: January 18, 2018

CLIFFORD & BROWN

By: Stanley C. Powell for
Richard G. Zimmer
Attorneys for Bolthouse Properties, Llc and Wm Bolthouse Farms, Inc.

DATED: January 18, 2018

NOAH GOLDEN-KRASNER
Deputy Attorney General

By: Stanley C. Powell for
Noah Golden-Krasner
Deputy Attorney General
Attorneys for State Of California And State Of California 50th District Agricultural Association

DATED: January 18, 2018

ELLISON, SCHNEIDER & HARRIS, LLP

By: Stanley C. Powell for
Christopher M. Sanders
Attorneys for County Sanitation Districts Of Los Angeles County Nos. 14 And 20

# EXHIBIT 1

# Pre-Rampdown Pumping Assumptions for SC-2 and SC-2a

| Name | Scenario 2 and 2a (Ramp Down Current Pumping to Native Safe Yield) Model Years 1 and 2 Pre-Rampdown acre-ft/yr | Sources |
|---|---|---|
| Small Pumper Class | 9,747.55 | Average of 2011 and 2012 pumping estimated based on report prepared by GSI Water Solutions, Inc. July |
| Federal[1] | 1,348.34 | Average of 2011 and 2012 pumping based on the Phase IV Amended Statement of Partial Decision |
| State of California | 279.46 | Average of 2011 and 2012 pumping based on email from Noah Golden-Krasner of California Department of Justice on 29-Jun-15 |
| Public Water Suppliers[2] | 40,450.02 | Average of 2011 and 2012 pumping based on Phase IV Amended Statement of Partial Decision and historical pumping records provided by the West Valley County Water District |
| Land Owners | 105,892.63 | Pre-Rampdown production from the Second Revised Exhibit 4 to the Second Amended Stipulation for Entry of Judgment |
| City of Lancaster | 500 | Based on Section 5.1.7 of the Judgment and Physical Solution |
| Phelan Pinon Hills CSD | 1,200 | Based on Section 6.4.1.2 of the Judgment and Physical Solution |
| **Total** | **159,418.00** | |

[1] Federal reserved right is 7,600 AFY. 35 AFY of unused water right was reallocated to West Valley County Water District and the remaining unused water right was reallocated to the remaining public water suppliers based on percentage share shown in Exhibit 3 of the Judgment and Physical Solution.

[2] Including unused water right from the Federal reserved right.

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PWS-0543-00044

Judicial Council Coordination Proceeding No. 4408
For Filing Purposes Only: Santa Clara County Case No.: 1-05-CV-049053

**PROOF OF SERVICE**

I, Sherry Ramirez, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 18, 2018, I submitted a copy of the within document(s): **OPPOSITION TO PUBLIC WATER SUPPLIERS' MOTION TO INTERPRET JUDGMENT AND RESPONSE TO WATERMASTER'S MOTION FOR ORDER INTERPRETING JUDGMENT** to www.avwatermaster.org for email submission to all parties appearing on the electronic service list for the Antelope Valley Groundwater case. Electronic service is complete at the time of transmission.

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

Executed on January 18, 2018 at Sacramento, California.

Sherry Ramirez