EXHIBIT 5

Antelope Valley Watermaster Board
Special Meeting Agenda
Wednesday, December 6, 2017 – 10:00 a.m.
Location: Antelope Valley – East Kern Water Agency
6500 West Avenue N, Palmdale, CA 93551
Teleconference: 1 (872) 240-3212 Access Code: 128-992-389

BOARD OF DIRECTORS

Robert Parris, AVEK Water Agency – Chairperson
Dennis Atkinson, Landowners – Vice Chairperson
Adam Ariki, Los Angeles County Waterworks District 40
John Calandri, Landowners
Leo Thibault, Public Water Suppliers

Posted: December 4, 2017 @ 3:41 pm
By: Patricia Rose
Patricia Rose Interim Secretary

Phyllis Stanin, Todd Groundwater – Watermaster Engineer
Craig Parton, Price Postel & Parma LLP - Attorney

Note: To comply with the Americans with disabilities Act, to participate in any Watermaster meeting please contact Patti Rose at 661-943-3201at least 48 hours prior to a Watermaster meeting to inform us of your needs and to determine if accommodation is feasible.

1) **Call to Order**
2) **Roll Call**
3) **Adoption of Agenda**
4) **Public comments for non-agenda items.** (This portion of the agenda allows an individual the opportunity to address the Board on any item regarding Watermaster business that is NOT ON THE AGENDA. Without acting or entering a dialogue with the public, Board members may ask clarifying questions about topics posed by the public. Your matter may be referred to the administrator and/or advisory committee.)

5) **Consent Agenda**
   A. Payment of the bills through November 30, 2017
   B. Financial report ending October 31, 2017
   C. Accounts Receivable Aging Summary

6) **Advisory Committee Report**

7) **Action Items**

   A. Discussion and possible action on publishing for public review and comment the proposed process and procedures for levying administrative assessments for 30 days and scheduling the public hearing to consider approval of same.

   B. Discussion and possible action on Resolution No. R-17-08 approving filing by the Watermaster of a motion with the Superior Court of Los Angeles seeking interpretive guidance as to Pre-Rampdown Production Rights under the Judgment and Physical Solution.

C. Discussion and possible action on Resolution No. R-17-09 approving filing by the Watermaster of a motion with the Superior Court of Los Angeles seeking interpretive guidance as to Carry Over Water Rights under the Judgment and Physical Solution.

D. Discussion and possible action on well approval process and applications for new well applications by parties within the Adjudicated Boundaries, but not a party to the Judgment.

E. Discussion on Distribution of Unused Federal Production Rights.

F. Discussion on Imported Water Return Flows for 2016 and 2017 – Appendix H

G. Discussion and possible action on proposal to perform 2016 and 2017 Financial Audit Services.

H. Presentation and discussion on Replacement Water Assessments - Staff

8) Engineer's Report – Phyllis Stanin

9) Attorney's Report – Craig Parton

10) Staff Report's

11) Board Members Request for Future Agenda Items

12) Adjournment

7) Action Item

B. Discussion and possible action on Resolution No. R-17-08 approving filing by the Watermaster of a motion with the Superior Court of Los Angeles seeking interpretive guidance as to Pre-Rampdown Production Rights under the Judgment and Physical Solution.

RESOLUTION NO. R-17-08

APPROVING FILING BY THE WATERMASTER OF A MOTION WITH THE SUPERIOR COURT OF LOS ANGELES SEEKING INTERPRETIVE GUIDANCE AS TO PRE-RAMPDOWN PRODUCTION RIGHTS UNDER THE JUDGMENT AND PHYSICAL SOLUTION

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment (Judgment) Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, requested at its Board meeting on November 15, 2017 that its General Counsel provide a legal opinion as to certain issues related to Pre-Rampdown Production rights as described in the Judgment; and

WHEREAS, General Counsel has provided that opinion and has recommended that the interpretive guidance of the Los Angeles Superior Court be sought, pursuant to that Court's continuing jurisdiction over this Judgment, on certain issues described in the Memorandum by General Counsel regarding Pre-Rampdown Production rights and dated December 4, 2017; and

WHEREAS, the Watermaster wishes to direct its General Counsel to seek said interpretive guidance from the Los Angeles Superior Court as soon as reasonably practical so that Rules and Regulations can be adopted by the Watermaster and approved by the Court that properly reflect the Court's views concerning Pre-Rampdown Production rights; and

WHEREAS, in particular the Court's interpretative guidance is sought:

- Whether or not only those Parties identified on Exhibit 4 of the Judgment have Pre-Rampdown Production rights that may exceed their Production Rights.

NOW THEREFORE BE IT RESOLVED, the Watermaster Board unanimously approves the filing by its General Counsel of a motion with the Los Angeles Superior Court seeking that Court's interpretative guidance that the opinions of its General Counsel on the topic of Pre-Rampdown Production rights, which are memorialized in the Memorandum regarding that topic and dated December 4, 2017, are consistent with the Court's intention as expressed in the Judgment.

I certify that this is a true copy of Resolution No. R-17-08 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held December 6, 2017, in Palmdale, California.

Date: _____

_____
Robert Parris, Chairman

ATTEST: _____
Patricia Rose – Interim Secretary

Special Meeting
December 6, 2017

Pre-Rampdown Production Rights

Memorandum – Craig Parton
General Counsel

PRICE, POSTEL & PARMA LLP

MEMORANDUM

TO:	Board of the Antelope Valley Watermaster	DATE:	December 4, 2017
FROM:	Craig A. Parton General Counsel Antelope Valley Watermaster	FILE NO.:	23641-1
SUBJECT:	Pre-Rampdown Production Rights Under the Judgment and Physical Solution		

I. INTRODUCTION & BACKGROUND

The history of this case spans over 15 years of litigation and involved extensive negotiations, thousands of Parties, and four phases of trial. Those negotiations ultimately resulted in a Stipulation amongst a large number of the Parties for the Entry of a Judgment and Physical Solution that was "accepted and adopted ....as the Court's own physical solution" in a Judgment dated December 23, 2015 (1:1-15). That Judgment and Physical Solution provides the legal framework for understanding the Parties rights and duties going forward with respect to this groundwater adjudication.

Essentially all of the Public Water Suppliers identified on Exhibit 3 to the Judgment alleged and obtained substantial prescriptive rights (over 30,000 AFY) to the Groundwater in the Basin as against various Parties (Judgment, 1:19-2:3). For this and other reasons, substantial distrust developed between certain Parties to the litigation. Accordingly, and in general, the Parties did not leave material terms to future resolution as they apparently recognized that it was vital to provide as much detail on substantive issues as was practicable under the circumstances. Not surprisingly, the Judgment and Physical Solution reflect negotiating trade-offs amongst the Parties. For example, the Public Water Suppliers obtained an entitlement to the unproduced portion of the Federal Reserved Water Right[1] and a substantial portion of the Imported Water Return Flows, as well as rights and duties under the Drought Program and presumably a substantial portion of the benefit from the In Lieu Production Right Carry Over. On the other hand, those Parties with Overlying Production Rights identified in Exhibit 4 of the Judgment stipulated to what the Court characterized as "severe reductions" in their Production Rights in exchange in part for obtaining "Pre-Rampdown Production" rights during the so-called "Rampdown Period" discussed in the Judgment.[2] All Producers potentially benefited from the

[1] All Exhibit 3 Producers except Boron Community Services District and West Valley County Water District are entitled to the unused portion of the Federal Reserved Water Right—see Section 5.1.4.1.

[2] No one disputes that those Parties with Overlying Production Rights identified on Exhibit 4 to the Judgment clearly have Pre-Rampdown Production rights under the Judgment.

provision that no Producer would be subject to Replacement Water Assessments during the first two years of the Rampdown Period (see Section 8.3).

The issues relating to Rampdown were the subject of a Revised Draft Issue Paper generated by the Watermaster Engineer and dated October 18, 2017 (with minor revisions made December 1, 2017). Substantial written and oral communications have revolved around which Parties have Pre-Rampdown Production rights. In addition to numerous letters and memoranda on the subject generated by the Parties' representatives, the Watermaster Board received public comment during the meeting of the Board on November 15th. General Counsel has reviewed all written comments provided and attended the Board meeting on November 15th where comments were offered by various representatives of the Parties.

It was suggested by some Party representatives at the Board meeting on November 15th that General Counsel might also benefit from reviewing some written communications generated during settlement discussions. Concern was raised about the potential confidentiality and relevance of those communications and ultimately no such communications were forwarded to General Counsel for review.

Because Replacement Water Assessments become effective January 1, 2018, and because a Party's potential entitlement to Pre-Rampdown Production rights may impact on whether (and how much) that Party is obligated to pay such assessments for Replacement Water, the Watermaster Board requested that General Counsel provide an opinion memorandum on the issues involving Pre-Rampdown Production rights under the Judgment.

II. ISSUE PRESENTED

Question: Does the Judgment and Physical Solution establish that other Parties not listed on Exhibit 4 to the Judgment have Pre-Rampdown Production rights other than their Production Rights as well as the right all Producers have to not being subject to Replacement Water Assessments during the first two years of the Rampdown Period?

Answer: 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 Judgement 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.

III. THE INTERPRETIVE DISAGREEMENT

The Parties on each side of the argument claim that the "plain language of the Judgment" requires resolving the issue framed above in their favor. At times the competing Parties cite the same provisions of the Judgment in support of their position.

In general, those with Overlying Production Rights and identified on Exhibit 4 to the Judgment argue that: (1) a Pre-Rampdown Production right is specifically reserved to those Parties identified in Exhibit 4 (i.e., the definition of "Overlying Production Rights" in Section 5.1.1 specifically identifies those Parties in Exhibit 4 as entitled to "Pre-Rampdown Production" as a component of their Overlying Production Rights, while the definition of "Non-Overlying Production Rights" (5.1.6) is silent about any Pre-Rampdown Production component for Non-Overlying Producers); (2) that those Parties identified on Exhibit 4 specifically negotiated for a Pre-Rampdown Production right as a way to soften the impact of the "severe reductions"[3] they agreed to in the Judgment; (3) that those with Non-Overlying Production Rights listed in Exhibit 3 had already cut back Production by the time of the Judgment[4] and had less need for a Pre-Rampdown Production right in light of their negotiating for entitlement to the unproduced portion of the Federal Reserved Water Right, as well as being the sole beneficiaries of the Drought Program and major beneficiaries of the In Lieu Production Carry Over rights; and (4) that expanding the number of those Parties with increased Pre-Rampdown Production rights significantly increases Overdraft during the Rampdown Period since this increased Production consistent with Rampdown values is not subject to any duty to pay Replacement Water Assessments (Section 8.3). The result, it is argued, is that dramatically increased Production of Groundwater will occur in the Basin (at least during the Rampdown Period) which will negatively impact on the Court's intention to protect the Basin from Overdraft as reflected in the Statement of Decision, Judgment and Physical Solution. In addition, that increased Production will not be offset by the purchase of Replacement Water.

Countering these arguments, representatives of Parties on Exhibit 3, and those aligned with that position for purposes of this issue, argue that: (1) the "plain language" of the Judgment makes obvious that "each Party" (Section 8.3) who is a Producer of Groundwater from the Native Safe Yield is entitled to a Pre-Rampdown Production right that may be in excess of their Production Right; (2) that the definitions in the Judgment of "Party" (3.5.27) and "Producer" (3.5.30) as those terms are used in Section 8.3 apply to each Non-Overlying Producer; and (3) that the Judgment left to the Watermaster Engineer various future calculations and among those was the duty to calculate Pre-Rampdown values for those with Non-Overlying Production

[3] The Court's December 23, 2015 Statement of Decision notes that the Court "finds that the Landowner Parties and the Public Overliers will be required to make **severe reductions** in their current and historical reasonable and beneficial water use under the physical solution." (11:14-16, *emphasis added.*)
[4] Statement of Decision, (23:8-10).

Rights according to a methodology not found in the Judgment (e.g., the methodology used to determine the Pre-Rampdown Production rights reflected for the Overlying Parties on Exhibit 4 may provide guidance). It is argued that the only reason those Pre-Rampdown Production amounts for Parties identified in Exhibit 3 were not contained in the Judgment was that there was disagreement and confusion as to the impact that Imported Water Return Flows might have on that calculation especially as it relates to the Public Water Suppliers identified in Exhibit 3.

As noted, the disagreement has resulted in numerous opinion memoranda being circulated as well as comments from participants in the various proceedings of the Advisory Committee. General Counsel has been asked for an opinion recommending what the position of the Watermaster Board should be as to entitlement to Pre-Rampdown Production rights.

IV. LEGAL ANALYSIS

To understand the role of Pre-Rampdown Production rights as they are reflected in the Judgment it is important to be familiar with the definitions of certain key terms. First we will examine how Overlying and Non-Overlying rights are defined in the Judgment and then turn to the legal framework that relates to Pre-Rampdown Production.

Initially we note that Judgment is emphatic that "[t]he Physical Solution requires **quantifying** the Producers' rights within the Basin in a manner which will reasonably allocate the Native Safe Yield and Imported Water Return Flows and which will provide for sharing Imported Water costs." (30:3-6, *emphasis added.*) Thus the intention of the Physical Solution is to "quantify" rights so that the Basin can be operated within its Native Safe Yield. The burden, then, is on the Party arguing that quantification of a right based on an historical (not future) value was explicitly not addressed and was instead left to a future post-Judgment determination.

A. Overlying and Non-Overlying Production Rights.

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

Section 5.1.1 then later states that "[t]he Parties listed in Exhibit 4, attached hereto and incorporated herein by reference, have Overlying Production Rights. Exhibit 4 sets forth the following for each Overlying Production Right: (1) the Pre-Rampdown Production; (2) the Production Right; and (3) the percentage of the Production from the Adjusted Native Safe Yield." Exhibit 4 lists those with Overlying Production Rights and specifically includes the "Pre-Rampdown Production" component as identified in Section 5.1.1.

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

Section 5.1.6 then later states as to Non-Overlying Production Rights that "[t]he Parties listed in Exhibit 3 **have Production Rights in the amounts listed in Exhibit 3**. Exhibit 3 is attached hereto and incorporated herein by reference. Non-Overlying Production Rights are subject to the Pro Rata Reduction or Increase only pursuant to Paragraph 18.5.10." (*Emphasis added.*) Exhibit 3 has no calculation for Pre-Rampdown Production for those Parties identified in Exhibit 3 nor does Section 5.1.6 list that right as a component of a Party's Non-Overlying Production Right. Section 18.5.10 relates solely to changes in Production Rights in response to a change in Native Safe Yield and states that in the event "the Court changes the Native Safe Yield pursuant to paragraph 18.5.9, the increase or decrease will be allocated among the Producers in the agreed percentages listed in Exhibits 3 and 4, except that the Federal Reserved Water Right of the United States is not subject to any increase or decrease." Thus Section 5.1.6, read in connection with Section 18.5.10 (and consistent with how the components of an Overlying Production Right are listed in Section 5.1.1), reasonably leads to the conclusion that each component of a Non-Overlying Production Right is specifically listed in Exhibit 3. There is no mention of Pre-Rampdown Production rights in Exhibit 3 nor are such rights quantified for Non-Overlying Producers (or anyone else for that matter) anywhere in the Judgment other than in Exhibit 4.

In addition, Section 5.1.4.1 addressing Federal Reserved Water Rights states that the Production of the unused portion of this Federal right "does not increase any Non-Overlying Production Right holder's decreed Non-Overlying Production Right amount or percentage...." It once again appears clear that the "amount" and "percentage" of the Non-Overlying Production Right was intended to be spelled out in full in Exhibit 3 and once again there is no mention of Pre-Rampdown Production rights being a component part of Non-Overlying Production Rights.

B. Production during Rampdown Period.

Production during the Rampdown Period is specifically outlined in the Judgment.

First the Rampdown is defined in Section 3.5.37 as follows: "The period of time for Pre-Rampdown Production to be reduced to the Native Safe Yield in the manner described in this Judgment."

Second, the Rampdown Period is described in Section 8.2 as the "seven Years beginning on the January 1 following entry of this Judgment and continuing for the following seven (7) Years." Therefore, the seven year Rampdown Period commenced on January 1, 2016 since the Judgment in this case was entered on December 23, 2015.

Pre-Rampdown Production is defined in Section 3.5.28 as follows: "**Pre-Rampdown Production**. 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." It is therefore clear that **if** Parties have an entitlement to Pre-Rampdown Production rights during

the Rampdown Period that right is either the reasonable and beneficial use of Groundwater prior to entry of the Judgment excluding Imported Water Return Flows, or their Production Right, whichever is greater.

The reduction of Production during the Rampdown Period is described in Section 8.3 as follows: "**Reduction of Production during Rampdown**. During the first two Years of the Rampdown Period, no Producer will be subject to a Replacement Water Assessment. During Years three through seven of the Rampdown Period, the amount that each Party **may** Produce from the Native Safe Yield will be progressively reduced, **as necessary**, in equal annual increments, from its Pre-Rampdown Production to its Production Right. Except as is determined to be exempt during the Rampdown Period pursuant to the Drought Program provided for in Paragraph 8.4, any amount Produced over the required reduction will be subject to a Replacement Water Assessment. The Federal Reserved Water Right is not subject to Rampdown." (*Emphasis Added.*)

Section 8.3 applies only to Producers with Pre-Rampdown Production rights in excess of their Production Rights. It is inapplicable if a Party has no Pre-Rampdown Production right reflected in the Judgment, in which case that Party's Production Right is in fact their Pre-Rampdown Production right. In that case, it is not **necessary** to reduce Pre-Rampdown Production because it is already the Production Right, by definition.

Section 8.3 reflects that no Producer will be subject to a Replacement Water Assessment for the first two years of the Rampdown Period (that two year "grace" period expires on December 31, 2017 but, importantly, allows **all** Producers the equivalent benefit of a Pre-Rampdown Production right in excess of their Production Right during the initial two Years). This two Year grace period (2016/2017) has allowed a Producer to Produce Groundwater in excess of their Production Right and not be subject to a Replacement Water Assessment. In short, this provision allows all Producers (including those Parties with Non-Overlying Production Rights identified on Exhibit 3) two full Years in which to prepare for the effects of the implementation of Replacement Water Assessments being imposed beginning January 1, 2018. In addition, the amount that "each Party **may**[5] Produce" from the Native Safe Yield will

[5] If the Judgment intended for **all** Parties who are Producers from the Native Safe Yield to benefit from Pre-Rampdown Production rights, this could have been easily accomplished by stating this plainly in Section 8.3 and not introducing the modifier "may" into that Section which suggests that there *may* be Parties who Produce from the Native Safe Yield but who do not have Pre-Rampdown Production rights in excess of their Production Rights (as is the case for almost 40% of the Parties identified on Exhibit 4). Furthermore, the interpretation suggested by the Public Water Suppliers appears to give Pre-Rampdown Production rights to **all** who Produce from the Native Safe Yield, which includes not only those with Overlying Production Rights (Exhibit 4) and those with Non-Overlying Production Rights (Exhibit 3), but also arguably the State of California (5.1.5) and those with Federal Reserved Water Rights (5.1.4), as well as the numerous members of the Small Pumper Class. No quantification of the Pre-Rampdown Production amounts to which any of these other Parties are entitled are mentioned anywhere in the Judgment and their calculation would require a substantial effort in time and resources on the part of the Watermaster Engineer. It is unreasonable to conclude that these critical calculations, which now mean so much to

be progressively reduced as necessary in equal annual increments from its Pre-Rampdown Production to its Production Right.

C. Any Interpretation of Section 8.3 Must be Consistent with Other Relevant Provisions in the Judgment.

The Public Water Suppliers argue that Section 8.3 is clear: Each Party that is entitled to Produce from the Native Safe Yield is thereby also entitled to a Pre-Rampdown Production calculation as outlined in section 3.5.28 (i.e., reasonable and beneficial use of Groundwater before the date of entry of the Judgment, excluding Imported Water Return Flows, or their Production Right, whichever is greater). Since the Public Water Suppliers are Parties entitled to Produce from the Native Safe Yield, the argument is that the Public Water Suppliers are clearly identified as Parties covered by Section 3.5.28 and entitled to Pre-Rampdown Production based on their reasonable and beneficial use of Groundwater before entry of the Judgment. All agree that the Judgment does not quantify a Pre-Rampdown Production amount for those Parties with Non-Overlying Production Rights who are identified in Exhibit 3.[6]

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

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

Further, the Statement of Decision (23:8-10) provides as follows: "When the United States does not take its allocation, the Physical Solution provides for certain parties who have cut back their present water use to use that water consistent with the Constitutional mandate of Article X, Section 2 to put the water to its fullest use." The "certain parties" referenced in the

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some Parties, would be left to negotiation and development by the Watermaster Engineer when the calculation was performed and clearly agreed to for those Parties identified on Exhibit 4.

[6] All the Public Water Suppliers identified in Section 3.5.35 are also identified in Exhibit 3 (which identifies the Parties with Non-Overlying Production Rights) except for the City of Palmdale and the City of Lancaster.

Statement of Decision are clearly those with Non-Overlying Production Rights that are allocated a portion of the unproduced Federal Reserved Water Right of the United States (see Section 5.1.4.1 of the Judgment). This language reflects that the Parties identified in Exhibit 3 had already "cut back their present water use" by the time of the Judgment so that their need to transition to operation within their Production Right during the Rampdown Period was less urgent and was presumably addressed by the two-year "grace" period contained in Section 8.3. In addition, the interpretation of the words "may" and "as necessary" in 8.3 as discussed above is consistent with the assumption that the lack of Pre-Rampdown Production rights for Non-Overlying Parties on Exhibit 3 (as well as the fact that for almost 40% of the Parties identified on Exhibit 4 their Pre-Rampdown Production **is** their Production Right) was the result of complex and extensive negotiations and may have been the basis for the allocation to those same Non-Overlying Parties of the unproduced portion of the Federal Reserved Water Right (not subject to Rampdown—5.1.4) and a long term (17 Years) fixed and more favorable ratio of Imported Water Return Flows (18.5.11) than is provided for "Agricultural Imported Water" (5.2.1), as well as rights to In Lieu Production Rights and Carry Over and the exclusive right to benefit from the Drought Program (Section 8.4-8.43).

V. ASSUMING FOR THE SAKE OF ARGUMENT THAT PARTIES IN ADDITION TO THOSE IDENTIFIED IN EXHIBIT 4 ARE ENTITLED TO A PRE-RAMPDOWN PRODUCTION RIGHT, A CONSISTENTLY APPLIED METHODOLOGY FOR CALCULATING THESE AMOUNTS IS NOT PRESENT IN THE JUDGMENT

It has been argued by Public Water Suppliers identified in Exhibit 3 (and those aligned with their interests) that the methodology to calculate the Pre-Rampdown Production rights of those on Exhibit 3 is provided for in the Judgment. Section 3.5.28 and its definition of Pre-Rampdown Production does provide as follows: "The reasonable and beneficial use of the Groundwater, except Imported Water Return Flows, at a time prior to this Judgment, or the Production Right, whichever is greater."

Some have suggested that the Pre-Rampdown Production for those Parties listed in Exhibit 3 be defined as the average of their Production in 2011 and 2012 and that this would be consistent with Section 3.5.28 and with values found in Exhibit 4. This methodology, however, was used to determine Pre-Rampdown Production amounts for only about half of the Overlying Producers identified in Exhibit 4. In order to calculate Pre-Rampdown Production amounts **after** entry of the Judgment it would likely require some level of certainty that those amounts would be derived from a consistently applied methodology. No consistent methodology can be derived from the values now found for Pre-Rampdown Production for those Parties identified in Exhibit 4, especially since those Parties do not generally need to account for Imported Water Return Flows when calculating any entitlement to Pre-Rampdown Production rights.

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

In this regard, we note that a primary objective of the Judgment is to provide a "physical solution to the basin's chronic overdraft conditions." (Statement of Decision, 2:6-7.) The Court envisioned and ordered that "if existing groundwater users exceed their respective allocations, they will pay a replacement assessment that will be used to bring in additional imported water into the Basin." (Statement of Decision, 22:5-7.) The amending of the Judgment to add Pre-Rampdown Production amounts in excess of a Production Right to Parties identified in Exhibit 3 could well result in additional overdraft in the Basin that will not be mitigated by the purchasing of an off-setting amount of Replacement Water. This is because Production of Groundwater in excess of a Party's Production Right during the Rampdown Period but less than the Pre-Rampdown Production amount is not subject to a Replacement Water Assessment (see Section 8.3--"Any amount produced *over the required reduction* shall be subject to Replacement Water Assessment." *Emphasis added.*)

VI. INTERPRETIVE GUIDANCE FROM THE SUPERIOR COURT SHOULD BE SOUGHT

It is clear that a significant number of the Parties disagree on the meaning of the Judgment as to certain issues relating to Pre-Rampdown Production rights. The Superior Court of Los Angeles has jurisdiction to interpret the Judgment and Physical Solution.

Section 664.6 of the California Code of Civil Procedure provides in pertinent part that: "If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." The power of the Court under Section 664.6 includes the power to *interpret* the material terms of the Parties' settlement agreement, but not the authority to "*create* the material terms of a settlement." (*Leeman v. Adams Extract and Spice, LLC* (2015) 236 Cal.App.4th 1367, 1374 (*emphasis added)*). If the Parties have stipulated that the Court retain jurisdiction to see a Judgment through full implementation, that reservation includes the power of interpretation.

In addition the Judgment itself also explicitly authorizes the Court to interpret the Judgment upon a noticed motion by a Party. Section 6.5 of the Judgment and Physical Solution expressly provides as follows: "The Court retains and reserves full jurisdiction, power and

authority for the purpose of enabling the Court, upon a motion of a Party or Parties, noticed in accordance with a notice procedures Paragraph 20.6 hereof, to make such further supplemental order or directions as may be necessary or appropriate to **interpret**, enforce, administer or carry out this Judgment and to provide for other matters as are not contemplated by this Judgment and which might occur in the future, and which if not provided for would defeat the purpose of this Judgment." (*Emphasis Added.*)

VII. CONCLUSION

The Judgment reflects significant give and take between the Parties. As noted above, the Court has made plain that this case was a comprehensive adjudication of all Parties' respective Groundwater rights in the Basin with a resulting Physical Solution to the Basin's chronic overdraft conditions. The Court also makes plain in the Judgment that the Basin is in a state of overdraft and that "[p]ortions of the aquifer have sustained a significant loss of Groundwater storage since 1951" and that long-term extractions have exceeded Basin recharge by "significant margins" (Judgment, 15:10-19). It is contrary to the intention of the Judgment to assume that a hydrologically significant amount of Pre-Rampdown Production rights were left to future resolution for those Parties identified in Exhibit 3 (and for arguably **all** other classes of right holders who may argue for Pre-Rampdown Production rights), but were specifically called out, calculated, and agreed to for Parties identified in Exhibit 4.

If there was confusion over the impact of Imported Water Return Flows on the calculation of Pre-Rampdown Production rights for those Parties identified in Exhibit 3, the Judgment could have easily and obviously noted that this calculation would be done in the future. The Judgment does not do so and this Board should not now amend the Judgment to add material terms that fundamentally change the nature of this complex agreement between the Parties.

BOARD ACTION REQUESTED

It is, therefore, recommended that the Court's guidance be requested and this Board direct its counsel to file a Motion under Section 20.3 of the Judgment as soon as reasonably possible, asking the Court to confirm that the opinion of the Watermaster Board on the issues relating to Pre-Rampdown Production rights is consistent with the Court's intention as expressed in the Judgment and Physical Solution. Clarification on the following issue from the Court is critical in terms of the timing of the Replacement Water Assessment process commencing in 2018:

1. That only those Parties identified on Exhibit 4 of the Judgment and Physical Solution have Pre-Rampdown Production rights that may exceed their Production Rights.

With this clarification, it is believed that substantial confusion and uncertainty can be resolved and administration of the Judgment and Physical Solution can move forward with the development and adoption of Rules and Regulations encompassing this principle.

Special Meeting
December 6, 2017

Pre-Rampdown Production Rights

Memorandum – Phyllis Stanin
Engineer

TODD GROUNDWATER

December 1, 2017

REVISED DRAFT ISSUE PAPER

To: Dennis LaMoreaux, Chair
Antelope Valley Watermaster Advisory Committee

From: Phyllis Stanin, Vice President/Principal Geologist
Kate White, Senior Engineer
Watermaster Engineer

Re: Pre-Rampdown Production for Non-Overlying Producers and Other Producers

The Judgment does not specify Pre-Rampdown Production for the Non-Overlying Producers (Exhibit 3 of the Judgment) or for the Federal, State, and City of Lancaster Producers, although such Pre-Rampdown production totals have been defined for Overlying Producers (Exhibit 4 of the Judgment). In addition, it does not define Pre-Rampdown Production for other Producers in the Judgment, such as the Non-Stipulating Parties (referred to as the Supporting Landowner Parties in Paragraph VII, a through h, Statement of Decision). The reason(s) that Pre-Rampdown Production for Producers other than the Overlying Producers is absent from the Judgment is not known and has not been researched independently by the Watermaster Engineer; the application of previously-undefined Pre-Rampdown Production to the Judgment will require a legal determination.

A group of Public Water Suppliers[1] has proposed a methodology for developing Pre-Rampdown Production for the Exhibit 3 Producers based on average production for 2011 and 2012, as submitted to the Court during Phase IV of the trial. This methodology was apparently used to define Pre-Rampdown Production for about half of the Overlying Producers in Exhibit 4 of the Judgment.

The purpose of this Issue Paper is to provide information to illustrate how this methodology might be applied to Exhibit 3 Producers or other parties that do not have a defined Pre-Rampdown Production number in the Judgment, if determined to be appropriate. This Issue Paper is not a recommendation for application of the methodology; further, it does not determine that Pre-Rampdown Production in excess of the Production Right is applicable to these parties, recognizing that this requires a legal determination. Rather, the information is provided to facilitate discussion by the Advisory Committee and determination by the Watermaster Board regarding potential assignment of Pre-Rampdown Production for these

[1] Referred to as the Public Water Suppliers Steering Committee.

Producers. Relevant portions of the Judgment and production data related to this methodology are summarized below.

RELEVANT PORTIONS OF THE JUDGMENT

As the Watermaster Engineer, Todd Groundwater is tasked with, among other duties, the tracking of Rampdown Production: "The Watermaster Engineer shall ensure that reductions of Groundwater Production to the Native Safe Yield (Rampdown) take place pursuant to the terms of this Judgment and any orders by the Court." (§18.5.2).

Pre-Rampdown Production is defined as "*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*" (§3.5.28).

Production Right is defined as "*The amount of Native Safe Yield that may be Produced each Year free of any Replacement Water Assessment and Replacement Obligation. The total of the Production Rights decreed in this Judgment equals the Native Safe Yield...*" (§3.5.32).

Rampdown is defined as "*The period of time for Pre-Rampdown Production to be reduced to the Native Safe Yield in the manner described in this Judgment*" (§3.5.37).

The Judgment describes the rampdown period and process in Paragraph 8.3 as follows:

> *...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...* (§8.3).

These definitions may indicate that production reductions during the Rampdown Period apply only to parties that are allocated a portion of the Native Safe Yield[2], which would include the Producers on Exhibits 3 and 4, as well as State Production Rights. Federal rights are not subject to Rampdown (see below). It is assumed that members of the Small Pumper Class are also not subject to a Pre-Rampdown production amount other than their Production Right, given the small amount of Production Right, the large numbers of Producers, and the details provided in the Judgment regarding their Production Rights (§5.1.3).

Pre-Rampdown Production for each of the Overlying Producers is quantified on Exhibit 4. However, Exhibit 3 does not contain similar information on Pre-Rampdown Production for the Non-Overlying Producers. The Judgment also does not define the Federal or State Pre-Rampdown Production but does state that "*The Federal Reserved Water Right to Produce*

[2] Producers allocated a portion of the Native Safe Yield include Overlying Producers (Exhibit 4), Non-Overlying Producers (Exhibit 3), California State Production Right, Federal Production Right, and Small Pumper Class. In addition, the Non-Stipulating parties are also included as having a Production Right.

7,600 acre-feet per Year is not subject to Rampdown or any reduction including Pro-Rata Reduction due to Overdraft" (§5.1.4).

For completeness, available information is also summarized herein on other Producers with rights to produce groundwater (but without a Production Right), including the City of Lancaster. For example, the City of Lancaster can produce up to 500 AFY for reasonable and beneficial uses at its National Soccer Complex until recycled water becomes available (§5.1.7). Consistent with the purpose of this Issue Paper, no recommendation is included as to whether a Pre-Rampdown Production is applicable to these other Producers; again, a legal determination will be required.

Finally, the Statement of Decision identifies eight parties with a right to produce groundwater, which were brought into the Judgment after the Physical Solution (Exhibit A) had been finalized (see Paragraph VII, *a* through *h*, Statement of Decision). Pre-Rampdown Production was not addressed in the Statement of Decision, but the parties were defined as Non-Stipulating Parties, which have a Production Right linked to the Native Safe Yield (§5.1.10).

METHODOLOGY FOR ESTABLISHING PRE-RAMPDOWN PRODUCTION FOR THE NON-OVERLYING PRODUCERS

A group of the Public Water Suppliers has recommended that Pre-Rampdown Production for those Parties listed on Exhibit 3 be defined as the average of their Production in the years 2011 and 2012, as submitted to the Court during Phase IV of the trial (filed July 19, 2013[3]). That document is attached to this memorandum for reference as **Attachment 1**. This methodology appears to be consistent with the Pre-Rampdown Production amounts for 47 of the 104 Overlying Producers in Exhibit 4 of the Judgment. The Watermaster Engineer has not researched reasons for applying or not applying the methodology to any particular Exhibit 4 Producer, as this involves a legal determination. Further, the methodology proposed by the Public Water Suppliers does not appear to be fully consistent with the Pre-Rampdown Production definition in the Judgment because imported water return flows are not specifically identified and excluded from the 2011 and 2012 production amounts.

Table 1 below contains the 2011/2012 average production using production data listed in the July 19, 2013 filing for the Non-Overlying Producers in Exhibit 3. For reference and context, **Table 1** also includes the Production Right and 2016 Production. As suggested by the proposed method, the 2011/2012 average would be used for the Pre-Rampdown Production Right. During Year 3 of the Rampdown Period (2018), this amount would be reduced in equal annual increments in years 3 through 7 of the Rampdown Period to reach the final Production Right.

---

[3] Amended Statement of Partial Decision for Phase IV Trial with Party Name Corrections, Antelope Valley Groundwater Cases, Superior Court of the State of California County of Los Angeles – Central District, July 19, 2013.

Table 1: Non-Overlying Producers 2011/2012 Average Production and Production Rights

Producer (Exhibit 3 of the Judment)	Average 2011 and 2012 Production (AF)	Production Rights (AF)	2016 Total Groundwater Production (AF)
Boron Community Services District	230.50	50.00	193.74
California Water Service Company	631.50	343.14	358.10
Desert Lake Community Services District	42.75	73.53	0.00
Littlerock Creek Irrigation District	1,420.19	796.58	1,327.10
Los Angeles County Waterworks District No. 40, Antelope Valley	18,601.12	6,789.26	16,001.90
North Edwards Water District	102.92	49.02	75.57
Palm Ranch Irrigation District	1,230.50	465.69	1,198.00
Palmdale Water District	7,283.76	2,769.63	8,473.40
Quartz Hill Water District	1,479.35	563.73	1,793.60
Rosamond Community Services District	2,990.78	404.42	2,300.00
West Valley County Water District	Not listed in 7/19/13 filing	40.00	129.38

For Desert Lake CSD, the 2011 and 2012 average production amount (42.75 AF-yellow highlighted value in **Table 1**) is less than its Production Right and would not be applicable as a Pre-Rampdown Production Right; as such, its Production Right (73.53 AF) could be used for its Pre-Rampdown Production. Average 2011 and 2012 production for West Valley County Water District was not listed in the Phase IV July 19, 2013 Court filing; accordingly, its Production Right (40 AF – see **Table 1**) could be used for its Pre-Rampdown Production, similar to Desert Lake CSD.

Table 2 lists the 2011/2012 average production for the Federal, State, and City of Lancaster Producers as contained in the July 19, 2013 filing. The table also provides each Production Right and 2016 Production, when available, for reference. The Federal water right is included in **Table 2** for completeness, but is not subject to Rampdown (§5.1.4 in the Judgment).

Table 2: Federal[4], State, and City of Lancaster Production Rights and 2016 Production

Federal, State and City of Lancaster Rights	Average 2011 and 2012 Production (AF)	Production Rights or Rights to Produce Groundwater	2016 Total Groundwater Production (AF)
Federal Reserved Water Right	Not subject to Rampdown	7,600.00	1,094.01
State of California (207 AF total) from:			
Department of Water Resources	54.05	104.00	Not Reported
Department of Parks and Recreation	1.44	9.00	Not Reported
Department of Transportation	15.56	47.00	Not Reported
State Lands Commission	0.00	3.00	Not Reported
Department of Corrections and Rehabilitation	0.00	3.00	Not Reported
50th District Agricultural Association	0.00	32.00	Not Reported
Department of Veteran Affairs	0.00	3.00	Not Reported
Highway Patrol	0.00	3.00	Not Reported
Department of Military	0.00	3.00	Not Reported
City of Lancaster	506.63	500 .00	558.00

The average 2011/2012 production totals for the various State Departments (yellow highlighted values in **Table 2**) are less than the corresponding Production Rights. Therefore, the respective Department Production Right could be designated as the Pre-Rampdown Production. For the City of Lancaster, the 2011/2012 average production could be used as its Pre-Rampdown Production, consistent with the methodology for parties in **Table 1**, if Rampdown applies to the City of Lancaster production.

In summary, Pre-Rampdown Production could be established for Producers in the Judgment, if applicable to Rampdown reductions, using the following criteria:

1. **Average 2011/2012 Production is greater than the Production Right**. The average would be used as the Pre-Rampdown Production amount. From 2018 through 2022, the Pre-Rampdown Production would be reduced in equal increments each year to reach the Production Right.

[4] 2016 production based on final data received 8-10-2017.

2. **Average 2011/2012 is less than or equal to the Production Right.** Pre-Rampdown Production is defined as the Production Right and held constant during the rampdown period (2016-2022).

NON-STIPULATING PARTIES

Additional Production Rights are assigned to the Non-Stipulating Parties (referred to as the Supporting Landowner Parties in the Statement of Decision, §VII, *a* through *h*). These parties are listed in **Table 3** below, along with each respective Production Right.

Table 3: Non-Stipulating Parties and Production Rights

Non-Stipulating Parties	Production Right (AFY)
Desert Breeze MHP, LLC	18.1
Milana VII, LLC dba Rosamond Mobile Home Park	21.7
Reesdale Mutual Water Company	23
Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company	12
Clan Keith Real Estate Investments, LLC dba Leisure Lake Mobile Estates	64
White Fence Farms Mutual Water Company No. 3	4
LV Ritter Ranch, LLC	0
Robar Enterprises, Inc., HI-Grade Materials, Co., and CJR, a General Partnership	200

These Parties were determined to be Non-Stipulating Parties in a Trial Stipulation[5], dated September 28, 2015. These Non-Stipulating Parties were not included in Phase IV of the trial (filed July 19, 2013) and, as such, average production for 2011 and 2012 is not available in that document (**Attachment 1**). In addition, 2016 production for these parties was not reported. However, these production amounts were apparently provided in other Trial Stipulations and could be used for the purposes of Pre-Rampdown Production totals, if warranted. As with other Pre-Rampdown Production totals discussed in this Issue Paper, the applicability of a Pre-Rampdown Production other than the Production Right and the applicable amounts will require a legal determination.

ATTACHMENT 1: Amended Statement of Partial Decision for Phase IV Trial with Party Name Corrections, July 19, 2013.

[5] Trial Stipulation for Admission of Evidence by Non-Stipulating Parties and Waiver of Procedural and Legal Objections to Claims by Stipulating Parties Pursuant to Paragraph 5.1.10 of the [Proposed] Judgment and Physical Solution, September 28, 2015.

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John A. Clarke, Executive Officer/Clerk
By Amber Hayes, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

AMENDED [~~PROPOSED~~] STATEMENT OF PARTIAL DECISION FOR PHASE IV TRIAL WITH PARTY NAME CORRECTIONS

The Phase IV trial began on May 28, 2013, in Department 322 of this Court. Over the course of three days, the parties who participated in the Phase IV trial, with the exception of the Wood Class, presented evidence of their respective groundwater pumping during 2011 and 2012. The matter having been submitted, the court now renders its finding of facts in this Phase IV statement of decision.

FINDING OF FACTS

Based on the evidence submitted by the parties who participated in Phase IV, the court finds that the following amounts of groundwater were pumped from the Antelope Valley Groundwater Adjudication Area during 2011 and 2012 by the following parties:

CLAIMANT	2011 Pumping (acre-feet)	2012 Pumping (acre-feet)
Adams Bennett Investments, LLC	0	0
Antelope Park Mutual Water Company	244.7	172.8
Antelope Valley Joint Union High School District	65.94	71.74
Antelope Valley Water Storage LLC	1198	2281
Aqua J Mutual Water Company	42.5	47.3
AV Solar Ranch 1, LLC	129	147
AVEK	11463	2792
Averydale Mutual Water Company	247.9	268
Baxter Mutual Water Company	44.9	44.6
Big Rock Mutual Water Company	0	0
Billie and Randall Dickey	0	0
Bleich Flat Mutual Water Company	21.9	24.8
Blum Trust	0	0
Bolthouse Properties LLC/Farms	16720.22	16891.55
Boron Community Service District	228	233
Burrows/300 A40 H LLC	100	100
California Water Service Co.	623	640
City of Lancaster	489.68	523
City of Los Angeles, Department of Airports	5156	4531
Colorado Mutual Water Company	24.1	27.7
Copa De Oro Land Company	0	0
County Sanitation Districts of Los Angeles #14 and 20	575	551

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Craig Van Dam	55	57
Crystal Organic LLC	1591.769	1986.096
Del Sur Ranch LLC	0	0
Desert Lake Community Services District	58	27.49
Diamond Farming Co. LLC	1641.285	[491.989
Donna and Lee Wilson	10	10
Efren Chavez	25.7	25.7
Eldorado Mutual Water Company	272	280.1
eSolar Inc.; Red Dawn Suntower LLC	0	0
eSolar Inc.; Tumbleweed Suntower LLC	0	0
eSolar, Inc.; Sierra Sun Tower, LLC	5.76	5.76
Evergreen Mutual Water Company	66.4	72.6
Frank and Yvonne Lane 1993 Family Trust, Little Rock Sand and Gravel, Inc., George and Charlene Lane Family Trust [Does not include water pumped on land leased to Granite Construction]	1356	948
Gailen and Julie Kyle, R & M Ranch	9108	9442
Gary Van Dam, Gertrude Van Dam, Delmar Van Dam	9840	10023
Gene Bahlman	5.25	5.25
Gorrindo Resourceful LLC	624	0
Granite Construction Company (Little Rock Sand and Gravel, Inc.)	400	400
Grimmway Enterprises, Inc.	0	0
H & N Development Co. West Inc.	1695.25	1904.25
Jane Healy and Healy Enterprises Inc.	0	0
Jeffrey and Nancee Siebert	200	200
John and Adrienne Reca	519.5	483.4
John Calandri, B.J. Calandri, Sunrise Farms	4091	3515
Jose Maritorena, Marie Maritorena, Jean Maritorena, Maritorena Farms, the Jose Maritorena Living Trust	3624.8	3976.3
Juniper Hills Water Group	18	18
Los Angeles County Waterworks District 40	16583.24	20618.99
Land Projects Mutual Water Company	621	624
Landale Mutual Water Company	139.7	175.8
Landinv Inc	1212	862.14
Lapis Land Co., LLC	0	0
Laura Griffin	1170	1170
Lawrence J. Schilling and the L&M Schilling 1992 Family Trust	3.4	3.8

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Littlerock Creek Irrigation District	1367	1473.37
Littlerock Aggregate Co., Inc., Holliday Rock Co., Inc.	145	166
Llano Del Rio Water Company	598.2	547.1
Llano Mutual Water Company	0	0
Mabel Selak	0	0
Miracle Improvement Corp. (Golden Sands Mobile Home Park)	46.7	44.1
Nebeker Ranch	63	111
North Edwards Water District	104.52	101.32
Northrop Grumman Systems Corporation	1.5	1
NRG Solar Alpine, LLC	1.49	126.92
Palm Ranch Irrigation District	916	1545
Palmdale Water District	7024.67	7542.85
Phelan Pinon Hills Community Services District	1053.14	1035.26
Quartz Hill Water District	1433.8	1524.9
Richard Miner	930.8	1248
Richard Nelson, Willow Springs Co.	168.2	193.1
Rosamond Community Services District	2994	2987.56
Rosamond Ranch LLP	1	1
Sahara Nursery	25.37	18.98
Sal and Connie Cardile	0.712	0.712
Service Rock Products, L.P.	561	445
SGS Antelope Valley Development, LLC	0	0
Shadow Acres Mutual Water Company	55.7	49.5
Sheep Creek Water Co.	0	0
Southern California Edison Company	30.49	5
St. Andrews Abbey	149	201
State of California – Department of Military California Highway Patrol 50th District Agricultural Association Department of Veteran Affairs Department of Corrections and Rehabilitation State Lands Commission	0	0
State of California Department of Transportation	15.47	15.64
State of California Department of Water Resources	54.05	54.05
State of California Department of Parks and Recreation	1.58	1.3
Steve Godde and Forrest G. Godde 1998 Trust	1299	1624

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Sundale Mutual Water Company	430.7	457.8
Sunnyside Mutual Water Company	73.5	77.3
Tejon Ranchcorp and Tejon Ranch Company	1603	2770
Terry Munz	5	5
Thomas Bookman	236.6	308.4
Tierra Bonita Mutual Water Company	43	38.5
Tierra Bonita Ranch	607	403
Triple M Property Co.	1	1
U.S. Borax	924	1146
United States: Edwards AFB and Plant 42	1246.09	1450.59
Vulcan Materials Co., Vulcan Lands Inc., Consolidated Rock Products Co., Calmat Land Co., and Allied Concrete & Materials	634.91	403.29
WAGAS Land Company LLC	951.5	1016.8
WDS California II, LLC	2244	2550
West Side Park Mutual Water Company	294	267.5
White Fence Farms Mutual Water Company	782.8	783.3
Totals	**121,429.39**	**120,415.30**

All parties who participated in the Phase IV trial, with the exception of the Wood Class, have also stipulated to the above amounts of groundwater pumped. A copy of the stipulation is attached hereto as Exhibit "A". Notwithstanding the stipulation, the court finds that the evidence presented during the Phase IV trial supports each party's 2011 and 2012 groundwater production amount as stated herein.

GRANITE CONSTRUCTION COMPANY

During the Phase IV trial, the Public Water Suppliers indicated that they dispute the amount of groundwater pumped by Granite Construction Company ("Granite") at its Littlerock Quarry. In response, Granite agreed to install a meter for each of its wells at its Littlerock Quarry within 30 days after the Phase IV trial to measure groundwater pumping for a period of one year. At the conclusion of the one year period Granite and the Public Water Suppliers will compare the meter readings against Granite's 2011 and 2012 product volumes to estimate Granite's groundwater use in 2011 and 2012, and report the findings to the court if such findings differ materially from 400 acre-feet per year. For that reason, the court reserves jurisdiction to amend this decision based on the meter readings as to the amount of groundwater pumped by Granite in

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2011 and 2012. In the meantime, the agreement of the parties and the finding of the court is that Granite Construction is deemed to have pumped 400 acre feet of groundwater in 2011 and 2012, respectively.

THE WOOD CLASS

During the Phase IV trial, the Court-appointed expert had not completed its analysis of groundwater pumping by the Wood Class. It did not present any evidence in the Phase IV trial. Consequently, the Court defers the determination of the Wood Class groundwater pumping in 2011 and 2012 to a later time to be determined.

Dated: 6-29-13

JUDGE OF THE SUPERIOR COURT

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Special Meeting
December 6, 2017

Pre-Rampdown Production Rights

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Stanley C. Powell
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MEMORANDUM

VIA ELECTRONIC MAIL ONLY

TO: Antelope Valley Groundwater Adjudication Watermaster

FROM: Stanley C. Powell

CC: Phyllis Stanin, Watermaster Engineer
Craig Parton, Watermaster General Counsel

DATE: November 22, 2017

RE: Further Observations on Public Water Supplier Proposal Regarding Pre-Rampdown Production Values

---

I represent the City of Los Angeles in the Antelope Valley Groundwater cases. At its November 15, 2017 meeting, the Watermaster Board invited submittal of additional comments on the issue of Pre-Rampdown Production values for Non-Overlying users. This memorandum has been prepared in response to that invitation.

At the November 15 meeting, Public Water Supplier parties[1] provided oral comment that they believe the clear intent of the Judgment is for the Watermaster Engineer to develop quantified Pre-Rampdown Production values for Parties that do not have such values already defined in the Judgment, and specifically those Parties on Exhibit 3. I further understand that the Public Water Suppliers believe that Section 3.5.28 of the Judgment provides sufficient direction to the Watermaster Engineer to develop those values. Finally, I understand that the Public Water Supplier Parties are no longer proposing Pre-Rampdown Production values be estimated using the methodology that they originally proposed, and that they recognize that their proposed methodology was inconsistent with the Judgment because it did not consider Imported Water Return Flows (as required by Section 3.5.28 of the Judgment).

---

[1] I understand that the original proposal was offered by the Public Water Suppliers' "Steering Committee" to the Watermaster Engineer. As was noted in my memorandum dated November 1, 2017, it is not clear how this proposal by the Steering Committee relates to the positions of individual Public Water Suppliers. For the purpose of this memorandum, I assume the comments made by Public Water Supplier Parties at the November 15, 2017 Watermaster meeting also reflect the position of all the members of that Steering Committee.

I believe the comments made in my memorandum to the Advisory Committee chairperson, Dennis LaMoreaux (which were included in the agenda package for the November 15 Watermaster Meeting) remain valid, including that the lack of a Pre-Rampdown Production value in the Judgment shows an intent for such parties to limit their Production to their Production Right beginning in the third year of the Rampdown Period. However, I want to expand on my concerns about the approach being advocated by the Public Water Suppliers, given the greater clarity of the basis of the Public Water Suppliers' position.

- The Public Water Supplier Parties have not expressed their view of the full extent of the Parties that should have Pre-Rampdown Production values under their interpretation of the Judgment. I believe there may be arguments that it should extend to all Parties, such as the members of the Small Pumper class. It would be helpful for the Public Water Suppliers to identify which Parties it thinks the Watermaster Engineer should establish Pre-Rampdown Production values for, and why, because this asserted duty of the Watermaster Engineer has the potential to require establishing values for thousands of Parties.

- At the Watermaster meeting, the Public Water Suppliers supported their assertion that the intent of the Judgment is for the Watermaster Engineer to compute Pre-Rampdown Production values for Parties not on Exhibit 4, by noting that the Watermaster Engineer is already tasked with developing other numbers required to implement the Judgment. However, the computations by the Watermaster Engineer that are explicitly contemplated in the Judgment generally involve conditions that could not be determined before entry of the Judgment, and not computations of historical values that could have either been determined by the Court at trial, or by negotiation between the Parties in developing the Physical Solution ultimately agreed to by the stipulating parties.

- The interpretation advanced by the Public Water Suppliers seems to rely on the definition of Pre-Rampdown Production in Section 3.5.28 of the Judgment for the basis to compute Pre-Rampdown Production values, and that language does not provide for different methodology to be applied to different Parties. This implies that the method used to define Pre-Rampdown Production values must be consistent between Parties, including between Exhibit 4 Parties (that have Pre-Rampdown Production values already defined in Exhibit 4), and new values to be defined for others (like Exhibit 3 parties). The methodology originally proposed by the Public Water Suppliers' Steering Committee only reproduces about half of the values on Exhibit 4 (though I think that the Public Water Suppliers may have believed at one time that it explained all of the Exhibit 4 values). I think it is inappropriate to shift the Public Water Suppliers' unsuccessful effort to find a formula that reproduces the Exhibit 4 values over to the Watermaster Engineer. This will also shift the associated costs onto all Parties that pay Administrative Assessments, for a task which seems to involve a futile search for a formula that probably does not exist.

Received 11/29/2017
From: Gene Nebeker

Carryover of Pre-Rampdown Production Water for Parties in Exhibit 4

Introduction

Several folks listed on Exhibit 4 of the Judgment and Physical Solution have asked me to comment about the issue of Pre-Rampdown Carryover for parties listed on Exhibit 4. Most are not copied on this email.

I do not want to discuss the writings of the Watermaster Engineer on this subject because many of these issues may require legal and physical analysis beyond the scope of the Watermster Engineer's responsibilities.

I feel obliged to comment about several other issues that are already being falsely characterized or ignored in the discussion of various types of carryover. We cannot have an intelligent and meaningful conversation about carryover or any other subject without identifying these issues and providing better understanding.

Conclusion

The Pre-Rampdown water has been identified and quantified for the parties listed in Exhibit 4 in the Judgment and Physical Solution. These parties should be allowed to Carryover Pre-Rampdown water because such Carryover is of significant benefit to every party in the Basin, whether they are using groundwater or not, including the Public Water Suppliers. Otherwise, the governing document of the State of California, the California Constitution, as well as other statues, case law and State Water Resources Control Board doctrines will not be followed. Also, if Pre-Rampdown Production water shown in Exhibit 4 is not allowed to be carried over, the water supply and water quality of the Basin will be negatively impacted.

General Points of Discussion of Carryover of Exhibit 4 Pre-Rampdown Production Water

- The concept of Carryover is recognized and included in the Judgment and Physical Solution
- Pre-Rampdown Production is **identified** and **quantified** for the parties in Exhibit 4.
- The Judgment and Physical Solution allows Pre-Rampdown Production to be used by a party listed on Exhibit 4 and gradually diminished as the Rampdown progresses.
- If Pre-Rampdown Production Water is not allowed to be carried over for these parties, they must "Use It or Lose It." This is contrary to good Basin management which should motivate all parties to conserve.
- If a party does not use it, the water in the Pre-Rampdown Production is lost forever because neither the party in Exhibit 4 nor anyone else in the Basin can use the water because of the limitation of everyone's Production Rights.

- If Carryover of Exhibit 4 Pre-Rampdown Production Water is not allowed, the situation is analogous to sending water, most of it potable, down the sewer or into a septic field and is a **WASTE** and not using water to its **FULLEST EXTENT** for beneficial purposes as directed by the Constitution.

Follow the Law

Very important and fundamental legal issues that should have been included in discussions heretofore seem to be disregarded. Perhaps these issues have simply been overlooked. In the present situation, these include but are not limited to Article 10, Section 2 of the governing document of the State of California, the State Constitution. Other important documents include but are not limited to California Statutes such as Water Code Section 100, Water Code Section 275, Water Code 85023, etc., an abundance of Case Law, and California Water Resources Control Board's Reasonable Use Doctrine. All these documents have a common thread that the water resources of the State should be put to beneficial uses to the **fullest extent** which they are capable and **waste** or unreasonable use **must be prevented**.

Be Technically Correct Using Best Available Science

The Court's finding in Section 4.2 of the Judgment and Physical Solution states, "The evidence is persuasive that current extractions exceed recharge and therefore the Basin is in a state of overdraft" is no longer true and probably has not been true over the entire Basin for 43 years or more. However, some places, in particular the general pumping area of the Los Angeles County Waterworks District No. 40 and Palmdale Water District may be of concern. In our discussions now and in the future, reality should be a goal and therefore, Best Available Science should always be used.

Consider Water Quality

Providing Pre-Rampdown Carryover is an important step in protecting the water quality of the Basin. Every gallon of imported water brings some salt with it. Eventually, the community may have to treat water for salt as in the Santa Ana and other basins. Except for exceptional circumstances, imported water carries more salt (and possibly nitrogen and other contaminates) than most native water or water that presently exists in the aquifer. The State Water Resources Control Board Resolution 68-16 ("anti-degradation policy") may limit the use of imported water to help mitigate these water quality concerns.

Benefits to the Entire Community

In addition to water quality issues discussed above, many benefits to the Basin and entire community exist by allowing Exhibit 4 parties to carryover their Pre-Rampdown water. Parties on Exhibit 4 will have some water to use if needed and will be able to transfer water as provided by Section 15.3 and 16.1 of the Judgment and Physical Solution or by the Watermaster Rules and Regulations. All parties needing water, including the Public Water Suppliers, will benefit.

7) Action Item

C. Discussion and possible action on Resolution No. R-17-09 approving filing by the Watermaster of a motion with the Superior Court of Los Angeles seeking interpretive guidance as to Carry Over Water Rights under the Judgment and Physical Solution.

RESOLUTION NO. R-17-09

APPROVING FILING BY THE WATERMASTER OF A MOTION WITH THE SUPERIOR COURT OF LOS ANGELES SEEKING INTERPRETIVE GUIDANCE AS TO CARRY OVER WATER RIGHTS UNDER THE JUDGMENT AND PHYSICAL SOLUTION

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment (Judgment) Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, requested at its Board meeting on November 15, 2017 that its General Counsel provide a legal opinion as to certain issues related to Carry Over water rights as described in the Judgment; and

WHEREAS, General Counsel has provided that opinion and has recommended that the interpretive guidance of the Los Angeles Superior Court be sought, pursuant to that Court's continuing jurisdiction over this Judgment, on certain issues described in the Memorandum by General Counsel regarding Carry Over water rights and dated December 4, 2017; and

WHEREAS, the Watermaster wishes to direct its General Counsel to seek said interpretive guidance from the Los Angeles Superior Court as soon as reasonably practical so that Rules and Regulations can be adopted by the Watermaster and approved by the Court that properly reflect the Court's views concerning Carry Over water rights; and

WHEREAS, in particular the Court's interpretative guidance is sought:

- Whether Carry Over only applies to a Production Right, to a right to Imported Water Return Flows, or to an In Lieu Production Right.
- Whether Carry Over applies if a Party entitled to Carry Over Produces less than its Production Right or right to Imported Water Return Flows or otherwise meets the criteria for In Lieu Production Right Carry Over.
- Whether Carry Over does not apply to Production that exceeds a Party's Production Right or right to Imported Water Return Flows or In Lieu Production Right, but is less than a Party's Pre-Rampdown Production right.
- Whether Carry Over does not apply to the Small Pumper Class, the Non-Pumper Class, those with Federal Reserved Water Rights, or to the Non-Stipulating Parties.

NOW THEREFORE BE IT RESOLVED, the Watermaster Board unanimously approves the filing by its General Counsel of a motion with the Los Angeles Superior Court seeking that Court's interpretative guidance that the opinions of its General Counsel on the topic of Carry Over water rights, which are memorialized in the Memorandum regarding that topic and dated December 4, 2017, are consistent with the Court's intention as expressed in the Judgment.

I certify that this is a true copy of Resolution No. R-17-09 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held December 6, 2017, in Palmdale, California.

Date: _____

_____
Robert Parris, Chairman

ATTEST: _____
Patricia Rose – Interim Secretary

Special Meeting
December 6, 2017

Carry Over Water Rights

Memorandum – Craig Parton
General Counsel

PRICE, POSTEL & PARMA LLP

MEMORANDUM

TO:	Board of the Antelope Valley Watermaster	DATE:	December 4, 2017
FROM:	Craig A. Parton General Counsel Antelope Valley Watermaster	FILE NO.:	23641-1

SUBJECT: Carry Over Water Rights Under The Judgment and Physical Solution

I. INTRODUCTION & BACKGROUND

The Antelope Valley Groundwater Adjudication was an intensely litigated case that involved thousands of parties, more than 15 years of litigation, and four phases of trial. Documents filed in the case make clear that some level of distrust developed amongst some of the Parties—especially as between those with Overlying Production Rights (as defined in Section 3.5.26 of the Judgment) and the Public Water Suppliers (as defined in Section 3.5.35). This is not unusual in groundwater adjudications, especially when claims of prescription are being asserted as was the case in this particular adjudication.

Only after several years of negotiations did the case resolve by means of a Stipulation for Entry of Judgment and Physical Solution "accepted and adopted....as the Court's own physical solution" in a Judgment dated December 23, 2015 (1:1-15). That Judgment and Physical Solution constitute the legal framework for understanding the Parties' rights and duties going forward with respect to this groundwater adjudication.

There is significant disagreement concerning the interpretation and application of certain "Carry Over" provisions contained in the Judgment and Physical Solution. The Watermaster recognizes that time is of the essence since Replacement Water Assessments commence January 1, 2018 and that calculation may be impacted by a Party's right to Carry Over. Clarification and interpretative certainty is needed as to the circumstances under which the Carry Over principles found in the Judgment are applicable, the Parties with rights to Carry Over and those Parties who may lack those rights, and the advisability of seeking the Court's guidance on these issues as is provided pursuant to the Court's continuing jurisdiction over this case.

It is noted that the Court retained jurisdiction to interpret the Judgment pursuant to Section 6.5 of the Judgment that provides as follows:

> "The Court retains and reserves full jurisdiction, power and authority for the purpose of enabling the Court, upon a motion of a Party or Parties noticed in accordance with the notice procedures of Paragraph 20.6 hereof, to make such further or supplemental order or directions as may be necessary or appropriate to **interpret**, enforce, administer or carry out this Judgement and to provide for such other matters as are not contemplated by this Judgment and which might occur in the future, and which if not provided for would defeat the purpose of this Judgment." (*Emphasis added.*)

The Watermaster Engineer produced a Revised Draft Issue Paper dated October 18, 2017 that identified a number of the issues related to the application of the Carry Over provisions contained in the Judgment. That Issue Paper stimulated a number of written responses from participants in the Advisory Committee process and from representatives of various Parties. In addition, the Watermaster invited public comment with respect to the disparate positions concerning the interpretation and application of the rules concerning Carry Over found in the Judgment and Physical Solution. As part of the preparation of this memorandum, General Counsel has reviewed and considered all of the written communications and memoranda provided, as well as the oral comments and discussion on the topic presented at the November 15, 2017 Watermaster Board meeting. It was also suggested by some Party representatives at the Board meeting that General Counsel might benefit from reviewing some written communications generated during settlement discussions. Concern was raised about the potential confidentiality and relevance of those communications and ultimately no such communications were provided to General Counsel for review in preparing this memorandum.

As noted, the case has a long history of litigation and negotiation involving multiple classes of Parties. Those negotiations resulted in a Judgment that reflects a careful and comprehensive effort to address all material or substantive matters and to minimize those matters left for future resolution by the Parties and/or the Court. A number of Parties who have provided either oral or written comments to the Board have noted the substantial "give and take" between the Parties that ultimately led to settlement of the case and the Stipulation for Entry of the Judgment and Physical Solution that was accepted and approved by the Court.

As an example of that "give and take," those with Overlying Production Rights (3.5.26) agreed to substantial reductions in their current and historical production. This is so noted in the Court's Statement of Decision of December 23, 2015, where "[t]he Court finds that the Landowner Parties and the Public Overliers will be required to make ***severe reductions*** in their current and historical reasonable and beneficial water use under the physical solution." (See Statement of Decision, 11:14-16, *emphasis added.*) In order to lessen the effects of these "severe reductions" in current and historical use, those with Overlying Production Rights (3.5.26) obtained the benefits of a Rampdown Period in which to reduce their Production (3.5.31) to their Production Right (3.5.32).

The argument is made that the Public Water Suppliers absorbed less of a reduction (both as a percentage and in absolute numbers[1]) but in exchange acquired no right to a Pre-Rampdown Production right or a right to participate in a full Rampdown Period over which to spread that less severe reduction. In fact, those same Public Water Suppliers received a portion of the Federal Reserved Water Right, a majority of the Imported Water Return Flows (3.5.15; 3.5.16; and Exhibit 8 to the Judgment), as well as the benefits from participating in the In Lieu Production Right Carry Over provisions of Section 15.1and in the Drought Program (3.5.12; 8.4) which appears to, at least in part, lessen the effects on Public Water Suppliers of having a fixed Production Right without a Pre-Rampdown Production right or assistance from participation in a full 7-Year Rampdown Period.

All Producers, however, got some relief during the first two years of the Rampdown Period by not having to pay Replacement Water Assessments (8.3).

II. ISSUE PRESENTED

The continuing controversy over the application of the principles contained in the Judgment relating to Carry Over has raised a fundamental question: Does the right to Carry Over under the Judgment apply during the Rampdown Period (8.2) to Groundwater that exceeds a Party's "Production Right" (3.5.32) or Right to "Imported Water Return Flows" (3.5.16) or Right to In Lieu Production (15.1) but is less than any "Pre-Rampdown Production" right a Party may have (3.5.28)?[2]

Answer: 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.

III. CLASSES OR TYPES OF WATER RIGHTS TO WHICH CARRY OVER RIGHTS ATTACH UNDER THE JUDGMENT

Any analysis of a Party's rights to Carry Over pursuant to the Judgment begins with how the key terms relating to Carry Over are defined in the Judgment.

"Carry Over" is defined in Section 3.5.9 as follows: "The right to Produce an unproduced portion of an annual Production Right or a Right to Imported Water Return Flows in

[1] Those with Overlying Production Rights as quantified on Exhibit 4 had their Production reduced by 55% (from 105,878 AFY to 58,322 AFY—see Exhibit 4), while the Public Water Suppliers had their Production reduced by 36% (from 34,084 AFY to 12,345 AFY—see Exhibit 3 and Amended Statement of Partial Decision For Phase IV Trial, 1-4).

[2] The Parties appear to agree that this question is relevant only during the 7-Year Rampdown Period. The Parties also appear to agree that Carry Over clearly applies to any unproduced portion in a given Year of a Producer's Production Right unless a Party (e.g., the Non-Stipulating Parties—see Sect. 5.1.10) is specifically excluded from exercising that right under the Judgment.

a Year subsequent to the Year in which the Production Right or Right to Imported Return Flows was originally available."

This definition identifies two classes or types of water rights to which Carry Over attaches under the terms of the Judgment: (1) Production Rights (defined in 3.5.32); and (2) Imported Water Return Flows (defined in 3.5.16). Section 15.1 then includes the additional and third corollary class or type of Groundwater right entitled to Carry Over—namely In Lieu Production. The definition does **not** mention any other Groundwater right from which Carry Over may attach. As significantly, no mention is made of a right to Carry Over the unproduced portion of a Party's "Pre-Rampdown Production" as that term is defined in Section 3.5.28 in the Judgment. This would have been a seemingly simple and obvious place (as is Section 15.1-15.3 of the Judgment dealing with Carry Over) to clarify that Carry Over also applies to the unproduced portion of a Party's Pre-Rampdown Production right if this was in fact contemplated by the Parties. We note that this omission primarily affects those with Overlying Production Rights on Exhibit 4 who also absorbed "severe restrictions" and who are impacted by not being able to Carry Over that unproduced portion of their Production in excess of their Production Right but less than their Pre-Rampdown Production right.[3] It would equally affect the Public Water Suppliers if they had a Pre-Rampdown Production right in excess of their Production Right; this does not appear to be the case (see separate Memorandum on Pre-Rampdown Production Rights under the Judgment and Physical Solution, dated December 4, 2017).

We also note the importance of remembering that this case ended in a Judgment that was stipulated to by most of the Parties. No Party can change or add to its terms—the Judgment is the equivalent of a fully integrated agreement as to the terms it addresses. Therefore the law assumes that if material terms were omitted on topics otherwise covered in the Judgment, they were left out intentionally and as part of arm's length negotiations.

When a material term is omitted from an integrated agreement that covers the subject at issue, the Court may not admit evidence of a contradictory material term in a prior agreement or in a contemporaneous oral agreement (Code of Civil Procedure 1856 (a)). Here, while one may argue that the additional rights to Carry Over being advocated by some do not "contradict" the Judgment, they fundamentally change the nature of the bargain and the presumably delicate balance achieved amongst highly adversarial parties that resulted in a Stipulation for the Entry of Judgment. In addition, "[t]he 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 contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible" (Civil Code 1639). In addition, an interpretation of an agreement is to be employed which makes that agreement "lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intentions of the parties" (Civil

[3] We note that for almost 40% of the Parties identified on Exhibit 4, their Pre-Rampdown Production right and their Production Right are one and the same.

Code 1643). Here the intentions of the Parties are clear from the language of the Judgment. The Judgment is certainly operative and is also capable of being carried into effect by the conclusion that Carry Over was only to apply to the **unproduced** or unused portion of a Party's Production Right or Right to Imported Water Return Flows and was not intended to apply to Production in **excess** of those rights but less than a Party's Pre-Rampdown Production right.

In short, the suggested amended language would directly contradict the plain and unambiguous language of the Judgment and requires the substantive amending of the Judgment. The rules of legal evidence prohibit any such effort. While the Public Water Suppliers have detailed the potentially serious economic impact from the loss of Carry Over rights, this concern appears consistent with the argument that the Judgment's silence on this critical topic was not accidental.

IV. PARTIES NOT ENTITLED TO CARRY OVER WATER

As noted, Sections 15.1, 15.2 and 15.3 identify three classes or types of water rights that are eligible for Carry Over under the Judgment and Physical Solution. Those sections then identify the specific Parties eligible to exercise Carry Over rights—namely those Parties with Non-Overlying Production Rights and identified in Exhibit 3, those Parties with Overlying Production Rights and identified in Exhibit 4, and the State of California. Those Parties not identified on Exhibits 3 or Exhibit 4, and not the State of California, are therefore not eligible to exercise Carry Over rights. Those not eligible to exercise Carry Over rights would therefore include the Small Pumper Class, the Non-Pumper Class, the Non-Stipulating Parties[4] and those entitled to Federal Reserved Water Rights.[5] Presumably since Federal Reserved Water Rights are not eligible for Carry Over water, any unproduced portion of that right assigned to other Parties is also not eligible for Carry Over.

Finally the definitions of a Production Right, Right to Imported Water Return Flows, and In Lieu Production and the explicit identification of those Groundwater rights entitled to Carry Over and the exclusion of other classes or types of right holders and Parties from Section 15, establishes that those Producers without a Production Right or Right to Imported Water Return Flows or without a claim to In Lieu Production, but with a right to Produce groundwater under the Judgment (e.g., Non-Pumper Class) are not eligible for Carry Over water. This is also consistent with the definition of Carry Over in 3.5.9 which requires that one either have a Production Right or a Right to Imported Water Return Flows or an In Lieu Production Right to be eligible for Carry Over water. Because Production Rights are directly tied in the Judgment to

[4] Non-Stipulating Parties are in fact specifically excluded from Carry Over water rights even though they may have Production Rights (see Sect. 5.1.10).
[5] Those Non-Overlying Producers eligible for the unused portion of the Federal Reserved Water Right do not have the right to Carry Over that water since "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." (5.1.4.1.)

Native Safe Yield (3.5.32), the inability of a Party on Exhibit 4 to Carry Over Production in excess of their Production Right during the Rampdown Period does not result in waste or unreasonable use of Groundwater in violation of statutory or constitutional provisions, but instead results in that unproduced portion of a Party's Pre-Rampdown Production remaining in the Basin for the reasonable and beneficial use of all Producers.

V. RULES RELATING TO CARRY OVER WATER UNDER THE JUDGMENT

As noted above, the Judgment provides for three classes or types of water rights to which Carry Over attaches: (1) In lieu Production Right Carry Over (Section 15.1); (2) Imported Water Return Flow Carry Over (Section 15.2); and (3) Production Right Carry Over (Section 15.3). The Judgment then goes on to state the conditions which attach to each of these specific classes or types of water rights eligible for Carry Over as follows (all the below conditions are repeated in Sections 15.1, 15.2 and 15.3 and apply equally to all three classes or types of water rights):

A. The Producer may Carry Over its right to the unproduced portion of its Production Right or its Imported Water Return Flow Carry Over or its In Lieu Production Right for up to ten Years.

B. The Producer must Produce its full current Year's Production Right before any Carry Over water, or any other water, is Produced.

C. Carry Over water will be Produced on a first-in, first-out basis.

D. At the end of the Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to store unproduced portions of Carry Over, subject to terms and conditions established by the Watermaster.

E. Any Storage Agreements will preclude operations, including the rate and amount of extraction, which will cause material injury to another Producer or Party, in a subarea or the Basin.

F. If not converted to a Storage Agreement, Carry Over water not Produced by the end of the 10th Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry Over water.

G. The Producer may transfer any Carry Over water or Carry Over water stored pursuant to a Storage Agreement.

VI. THE DROUGHT PROGRAM PROVIDES THE PUBLIC WATER SUPPLIERS WITH ADDITIONAL FLEXIBILIITY DURING THE RAMPDOWN PERIOD

The Drought Program is for the explicit benefit of the Public Water Supplier Parties identified in Exhibit 3.[6] The Drought Program is defined in Section 3.5.12 as follows: "The water management program in effect during the Rampdown period (sic) affecting the operations and Replacement Water Assessments of the Participating Public Water Suppliers." Those Public Water Suppliers are specifically identified in Section 3.5.35.

The Drought Program is discussed at Sections 8.4-8.4.5 of the Judgment. These sections reflect the creation of a duty on the part of the Los Angeles County Water Works District No. 40 during the Rampdown Period to purchase 70% of its annual demand from AVEK or as much as AVEK makes available, but in no case more than 50,000 acre feet annually (see Section 8.4.1). During the Rampdown Period, the other Public Water Suppliers (identified in Section 3.5.35) all agree to maximize their annual purchases of State Water from AVEK (see Section 8.4.2) and all agree to use "all" the water made available by AVEK. In exchange, these Producers are not subject to the Replacement Water Assessments as long as they each have "utilized all water supplies available to it including its Production Right to Native Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water Rights, Imported Water, and Production rights previously transferred from another party." (8.4.2). No mention is made of "Pre-Rampdown Production" rights in that list of the various water rights available to the Public Water Suppliers identified on Exhibit 3 (see separate Memorandum on Pre-Rampdown Production Rights under the Judgment and Physical Solution, dated December 4, 2017).

In short, and under certain conditions, the Public Water Suppliers are encouraged to maximize Production without being subject to Replacement Water Assessments.

VII. CARRY OVER AND THE POTENTIAL IMPACT ON OVERDRAFT

The Statement of Decision in this case discusses the long-term intention of the Judgment to manage the Basin within its native safe yield. The Court states that "the Physical Solution ... provides for a sustainable groundwater supply for all parties now and in the future." (28:13-14.) It goes on to note that "[t]he Physical Solution will protect all water rights in the Basin by preventing future overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land subsidence." (21:23-25). The Physical Solution addressed overdraft by "additional importation of water into the Basin and thus additional return flows which will help to restore groundwater levels in the Basin" by presumably requiring the purchase of Imported

[6] The Right to In Lieu Production Carry Over (Sect. 15.1) also largely (but not exclusively) appears to benefit the Public Water Suppliers. In addition, the Public Water Suppliers obtained favorable percentage ratios for Imported Water Return Flows as part of the stipulated to Judgment (5.2.1) and a 17 year horizon to benefit from that percentage (18.5.11).

Water to offset Production by existing Groundwater users that exceeds their Production Rights, and to offset new production. (22:3-9.)

The exercise of Carry Over rights under the Judgment as it now reads does not result in a Replacement Water Assessment—in short, such Production is not offset by the purchase of Imported Water nor does it need to be since Carry Over (at least as far as it involves only the unused portion of a Production Right or an Imported Water Return Flow) does not harm Basin sustainability or create or encourage Overdraft of the Basin. However, if the right to Carry Over is extended to Production in excess of a Party's Production Right or right to Produce Imported Water Return Flows, then that Production would contribute to Overdraft in the Basin.

In short and said a different way, an interpretation of the Judgment that allows Carry Over of a Party's unproduced portion of its Pre-Rampdown Production that is in excess of that Party's Production Right would ultimately increase Overdraft (at least during the Rampdown Period) by allowing Production that is not offset by the purchase of an offsetting amount of Imported Water. This result would arguably negatively impact Groundwater sustainability in the Basin and is counter to the Court's strongly stated concern in the Statement of Decision about the importance of additional Imported Water coming into the Basin which allows additional Imported Water Return Flows to help restore Groundwater levels and facilitates Production within the Native Safe Yield.

VIII. CONCLUSION

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

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 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.

BOARD ACTION REQUESTED

It is, therefore, recommended that the Court's guidance be requested and that this Board direct its Counsel to file a Motion under Section 20.3 of the Judgment as soon as reasonably possible, asking the Court to confirm that the opinion of the Watermaster Board on the issues relating to Carry Over is consistent with the Court's intention as expressed in the Judgment and Physical Solution. Clarification on the following issues from the Court is critical in terms of the timing of the Replacement Water Assessment process commencing in 2018:

1. That Carry Over only applies to a Production Right, to a Right to Imported Water Return Flows, or to an In Lieu Production Right.

2. That Carry Over applies if a Party entitled to Carry Over Produces less than its Production Right or right to Imported Water Return Flows or otherwise meets the criteria for In Lieu Production Right Carry Over.

3. That Carry Over does not apply to Production that exceeds a Party's Production Right or Right to Imported Water Return Flows or In Lieu Production Right, but is less than a Party's Pre-Rampdown Production right.

4. That Carry Over does not apply to the Small Pumper Class, the Non-Pumper Class, those with Federal Reserved Water Rights, or to the Non-Stipulating Parties.

With these clarifications, it is believed that substantial confusion and uncertainty can be resolved and administration of the Judgment and Physical Solution can move forward with the development and adoption of specific Rules and Regulations encompassing these principles.