

EXHIBIT 27

1 KELLEY DRYE & WARREN LLP
Michael J. O'Connor (State Bar No. 090017)
2 10100 Santa Monica Boulevard, 23rd Floor
3 Los Angeles, CA 90067-4008
4 Telephone: (310) 712-6100
moconnor@kelleydrye.com

5 KELLEY DRYE & WARREN LLP
Andrew W. Homer (State Bar No. 259852)
6 7825 Fay Avenue, Suite 200
7 La Jolla, CA 92037
8 Telephone: (858) 795-0426
ahomer@kelleydrye.com

9 Attorneys for Defendant
10 **Long Valley Road, L.P.**

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14
15 Coordination Proceeding Special Title (Rule
1550(b))

16 **ANTELOPE VALLEY GROUNDWATER**
17 **CASES**

Judicial Council Coordination Proceeding
No. 4408

Santa Clara County Superior Court Case No.
1-05-CV-049053

Los Angeles County Superior Court Case
No. BC 325201

Assigned to Honorable Jack Komar (Ret.)
Department 17C

**LONG VALLEY ROAD, L.P.'S REPLY
IN SUPPORT OF MOTION TO
INTERVENE IN JUDGMENT**

Hearing Date: November 1, 2018
Time: 9:00 AM

1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Non-party LVRP files this single Reply in response to the separate Oppositions to LVRP’s
3 October 9, 2018 Motion for Leave to Intervene (“Motion,” Dkt. 128157) filed by certain Stipulating
4 Parties¹ on October 19, 2018 (“Stipulating Party Opposition,” Dkt. 128159),² and by the
5 Watermaster (“Watermaster Opposition,” Dkt. 128160) and certain Public Water Suppliers (“Public
6 Water Supplier Opposition,” Dkt. 128163)³ on October 20, 2018. LVRP does not oppose the
7 Watermaster’s related Request for Judicial Notice (Dkt. 128161), but additionally requests that the
8 Court take judicial notice of the June 26, 2009 *Notice of Class Action for the “Small Pumper” Class*
9 *Action* (“2009 Notice”), which was approved by the Court for use in the Small Pumper Class Action
10 on March 13, 2009 (Dkt. 2524; *see also* Dkt. 2445 (form of notice)).⁴

11 The primary arguments included in the Watermaster and Stipulating Party Oppositions hinge
12 on whether LVRP is a Party to the Judgment because it was erroneously named in the Small Pumper
13 Class Action and provided related notices. However, each of the related notices sent to LVRP made
14 clear that LVRP was not a member of the class, because the class has always been defined to include
15 only those landowners that pumped less than twenty-five acre-feet of water from the Basin in any
16 year from 1946 forward. The cases cited by the Watermaster and Stipulating Parties do not address
17 the effect of a class notice that, on its face, includes information that would lead a recipient like
18 LVRP to understand that it was unequivocally *not included in the class*. In fact, California cases
19 make clear that the class definition included in such notices is at the heart of their sufficiency, and

20 _____
21 ¹ Unless otherwise specified, all defined terms have the meaning set forth in the Judgment (Dkt.
11020).

22 ² The Stipulating Parties that joined in this Opposition are: (1) Grimway Enterprises, Inc., (2)
23 Diamond Farming Company, LLC; (3) Crystal Organic Farms, LLC; (4) Lapis Land Company,
24 LLC; (5) Granite Construction Company; (6) Tejon Ranchcorp; (7) Bolthouse Properties LLC;
(8) Bolthouse Farms, Inc.; (9) City of Los Angeles and Los Angeles World Airports; and (10)
County Sanitation Districts of Los Angeles County Nos. 14 and 20.

25 ³ The Public Water Suppliers that joined in this Opposition are: (1) Los Angeles County
26 Waterworks District No. 40; (2) City of Lancaster; (3) Rosamond Community Services District;
(4) Littlerock Creek Irrigation District; (5) Palmdale Irrigation District; and (6) Quartz Hill Water
District.

27 ⁴ A copy of the 2009 Notice is attached to the Watermaster’s October 20, 2018 Notice of Errata
28 (Dkt. 128165) as Exhibit B, and it is discussed in the Declaration of Jeffrey V. Dunn in support of
the Watermaster Opposition (Dkt. 128160 at 17, ¶¶ 2, 3, and 3 [sic]), but it is not included in the
Watermaster’s Request for Judicial Notice.

1 appellate courts have overturned entire class action settlements where related notices included
2 definitions that could lead potential members to improperly conclude they were not included.

3 The Watermaster, which itself did not believe LVRP was a member of the Small Pumper
4 Class until after this dispute arose, also claims that allowing LVRP to intervene in the Judgment for
5 purposes of requesting the Court to subsequently recognize, quantify, and prioritize LVRP's right
6 to Produce Groundwater would "set a dangerous precedent" and "open the floodgates" to various
7 categories of parties and non-parties that may seek to alter the Judgment. But LVRP's factual basis
8 for intervention is narrow and specific, and granting LVRP's Motion based on the unique facts
9 before the Court would neither fully establish LVRP's rights under the Judgment, nor in any way
10 clear a path for others to follow unless they could prove the same type of specific facts. Indeed, and
11 in keeping with the positions voiced by the Public Water Suppliers, LVRP itself expects that it
12 would be required to put on evidence in support of its claimed Production Right in subsequent
13 proceedings if it is allowed to intervene.⁵

14 The Stipulating Parties also argue that LVRP's Motion is procedurally improper because it
15 does not include a complaint or answer in intervention, as may be required in certain circumstances
16 under *Code of Civil Procedure* section 387(c). The Stipulating Parties ignore the primary basis for
17 LVRP's Motion, which is Section 20.9 of the Judgment itself. Section 20.9 expressly creates an
18 independent mechanism for non-parties to intervene. Ignoring the Court's express statement that the
19 Physical Solution must provide flexibility to maximize beneficial use in the Basin, and the reality
20 that LVRP's claim is based on highly specific facts, the Stipulating Parties apocalyptically claim
21 that allowing a single grower a chance to claim and prove a Production Right that was not previously
22 recognized would require re-litigating the entire Adjudication.⁶ The Stipulating Parties also

24 ⁵ The Watermaster and Public Water Suppliers take positions regarding the status LVRP should
25 obtain and what procedures must be followed if LVRP is allowed to intervene, none of which
26 LVRP strictly opposes. Dkt. 128161 at 13-14; Dkt. 128163 at 11. If allowed to intervene, LVRP
27 expects to be required to prove its Production Right, to pay any applicable Assessments, to comply
28 with all other requirements of the Judgment, and to enjoy only those benefits of the Judgment that
similarly situated parties do.

⁶ Section 20.9 of the Judgment, titled "Need for Flexibility," is a foundational clause and makes
clear that the Physical Solution may be changed over time without causing, as the stipulating
parties exaggerate, "the litigation [to] start anew." Dkt. 128159 at 2; *see*, Judgment at Section 7.2
("This Physical Solution must provide flexibility and adaptability to allow the Court to use existing

1 mischaracterize LVRP’s Motion as an impermissible collateral attack on the Judgment challenging
2 the Court’s jurisdiction over LVRP, and make numerous “evidentiary objections” based on the fact
3 that documents LVRP submitted, and even legal arguments LVRP made, are “not in the judgment
4 roll.” These again fail to address the fact that the Judgment expressly establishes a mechanism for
5 non-parties to intervene, such that if the Court agrees that LVRP was improperly included in the
6 Small Pumper Class, these arguments are moot.

7 **II. ARGUMENT**

8 **A. Class Ascertainability is Critical to Sufficient Notice.**

9 *California Rule of Court* Rule 3.766 sets the baseline for what class notices must include,
10 but the rule’s requirements have been clarified by appellate courts. The Watermaster cites cases
11 addressing sufficiency of notices in terms of manner of delivery, but does not include cases that
12 speak to sufficiency of content under Rule 3.766. Dkt. 128160 at 7-8. Review of a trial court’s
13 decisions on “manner of giving notice” is subject to an abuse of discretion standard, “but [appellate]
14 review of the *content* of notice may be de novo.” *Cho v. Seagate Technology Holdings, Inc.*, 144
15 Cal.App.4th 734, 745 (Ct. App. 2009) (original emphasis) (*citing Hypertouch, Inc. v. Superior*
16 *Court*, 128 Cal.App.4th 1527, 1537 (Ct. App. 2005); *Wersheba v. Apple Computer, Inc.*, 91
17 Cal.App.4th 224, 234-35 (Ct. App. 2001)). As noted by the Court of Appeal in *Cho*, “[t]he goal in
18 defining the class is to use terminology that will convey sufficient meaning to enable persons hearing
19 it to determine whether they are members of the class.” *Id.* at 746. A problem with a class definition
20 that makes it difficult for a noticed party to determine whether it will be bound by the action “goes
21 to the heart of the question of class certification” and “in the absence of an ascertainable class, it is
22 not possible to give adequate notice to class members or to determine after the litigation is concluded
23 who is barred from re-litigating.” *Id.* (*citing Global Minerals & Metals Corp. v. Superior Court*,
24 113 Cal.App.4th 836, 858 (Ct. App. 2003)) (internal quotations omitted).

25 Both the *Cho* and *Global Minerals* decisions reversed trial court decisions that relied on
26 class definitions that made it difficult for parties to ascertain whether they were bound by

27 _____
28 and future technological, social, institutional, and economic options in order to maximize
reasonable and beneficial water use in the Basin.”).

1 proceedings in the related class actions. *Cho*, 144 Cal.App.4th at 747; *Global Minerals*, 113
2 Cal.App.4th at 860. In doing so, the *Cho* court held:

3 We have no impression that there are large numbers of claimants who will come forward if
4 the class notice and definition are corrected, but the problem with this notice creates more
5 than a remote theoretical possibility that the claims of unsuspecting class members will be
brushed aside.

6 144 Cal.App.4th at 747. In its analysis, the *Global Minerals* court stated:

7 [Class] [a]scertainability ...goes to the heart of the question of class certification, which
8 requires a class definition that is precise, objective, and presently ascertainable. Otherwise,
9 it is not possible to give adequate notice to class members or to determine after the
litigation has concluded who is barred from relitigating.

10 113 Cal.App.4th at 858. The definition used in all notices to the Small Pumper Class was in fact
11 *unambiguous*, and repeatedly and clearly told parties that pumped more than twenty-five acre feet
12 – like LVRP did – that they were *not in the class*. But combined with inconsistent instructions on
13 who should respond, the initial notice created ambiguity about whether clear non-members who
14 received the notices were required to respond.

15 Only class members, as defined by the class definition, can be bound by a court’s judgment
16 in a class action. *See, e.g., Home Sav. & Loan Assn. v. Superior Court of Los Angeles County*, 42
17 Cal.App.3d 1006, 1011 (Ct. App. 1974) (“The critical reason for notification of members of the
18 class on whose behalf a class action has been brought is that notification makes possible a binding
19 adjudication and an enforceable judgment with respect to the rights of the members of the class.”)
20 (emphasis added); *Chance v. Superior Court of Los Angeles County*, 58 Cal.2d 275, 288-90
21 (judgment in a class action is *res judicata* as to only defined class members). As the Court is well
22 aware, certain parties and their counsel – including Class Counsel to the small pumpers – were
23 concerned about the possibility of confusion if the 2009 Notice was sent to recipients who clearly
24 did not fit within the class definition, but others insisted that this would not cause a problem because
25 “[t]he fact that hundreds of persons outside the Class definition may receive the [2009] Class Notice
26 and fail to return the questionnaire indicating that they are not properly members of the Class does

1 not render them class members; they are simply notice recipients.⁷ Indeed, two of the Stipulating
2 Parties that oppose LVRP’s Motion previously filed papers objecting to the 2009 Notice and
3 predicted the very scenario that is at issue here. *See*, Dkt. 2798⁸ at 2, ¶ 6 (“There is a lack of unity
4 of interest and conflict of interest between parties included in the class which ... could confuse a
5 potential member of the class into taking action and/or failing to take action appropriate to his/her/its
6 own circumstances.”). This is precisely what occurred with LVRP, and the mere fact that someone
7 sent LVRP class notices and LVRP did not opt out where each of those notices informed it of a
8 definition it did not fit within – a class specifically intended to include only small domestic water
9 users with rights adverse to agricultural users⁹ – did not render LVRP a class member. Rather, as
10 the Bolthouse parties that now oppose LVRP’s Motion aptly recognized it would in 2008, it rendered
11 LVRP a mere “notice recipient.”

12 **B. By Definition, LVRP is Not a Member of the Small Pumper Class.**

13 As an initial matter, LVRP has never taken the position in its discussions with the
14 Watermaster or in its Motion papers that it did not receive the 2009 Notice or any other notices sent
15 to the Small Pumper Class. Rather, LVRP merely stated that it has no record of receiving such
16 notices, and that even if it did, those notices were defective because they informed LVRP that it did
17 not fit within the defined class. *See, e.g.*, Dkt. 128157 at 3, 7-8. In its Opposition and supporting
18 papers, the Watermaster selectively quotes from various notices that were mailed to LVRP or
19

20 ⁷ Dkt. 2804 at 2-3 (*AGWA’s Objection to Proposed Order Approving Revised Class Notice for*
21 *Small Pumper Class Action*) (“The Class is defined to include only those who pump less than
22 twenty-five acre-feet per year, and the proposed Class Notice makes this clear. The fact that
hundreds of persons outside the Class definition may receive the Class Notice and fail to return
the questionnaire indicating that they are not properly members of the Class does not render them
class members; they are simply notice recipients. ... Nevertheless, counsel for the Small Pumper
23 Class is sufficiently concerned that persons outside the Class definition may receive the Class
24 Notice, that he has requested the Court appoint an expert to identify members of the Class with
greater precision before the Class Notice is disseminated.”) (emphasis added).

25 ⁸ *Bolthouse Properties, LLC’s and Wm. Bolthouse Farms, Inc.’s Objection to [Proposed] Notice of*
Class Action for the “Small Pumper” Class Action.

26 ⁹ *See, e.g.*, Dkt. 2525 at 5 (*Richard Wood’s Renewed Motion For Appointment of Expert*) (“There
27 is no dispute that the vast majority of the Small Pumper Class members are single family
28 residential users.”); Dkt. 2616 at 6 (*AGWA’s Motion to Decertify Small Pumpers’ Class*) (“In
recent filings, the Small Pumper[] Class has indicated that it believes that the class comprises
small domestic users of water. In fact, the Class’ filings make clear that Class Counsel ...
believe[s] that the class’ interests are adverse to those of agricultural water users in the Basin.”).

1 summary notices that were published in local papers in 2009, 2013 and 2015. But as noted in
2 LVRP’s Motion, each of these notices included objective information that would lead a party in
3 LVRP’s situation to conclude that the notices did not apply to or bind it. As such, these notices all
4 caused the precise problem that the Court of Appeals addressed when it overturned decisions based
5 on class notices in the *Cho* and *Global Minerals* decisions cited above. Specifically, sending notices
6 to significant agricultural pumpers like LVRP unquestionably “creat[ed] more than a remote
7 theoretical possibility that the claims of unsuspecting class members will be brushed aside,” because
8 such recipients would read the definition and reasonably understand the notices to not apply. *Cho*,
9 144 Cal.App.4th at 747. Based on the class definition “it [was] not possible to give adequate notice
10 to class members or to determine after the litigation has concluded who is barred from relitigating”
11 without looking at the Judgment exhibit listing class members, something an unsuspecting notice
12 recipient like LVRP would never have had reason to do (putting aside the fact that, by the time its
13 name appeared buried in an exhibit to the Judgment, it would have been too later for LVRP to object
14 or opt out). *Global Minerals*, 113 Cal.App.4th at 858.

15 Moreover, the notices included contradictory language that could have caused an
16 unsuspecting notice recipient like LVRP to believe it need not respond. For example, with respect
17 to the 2009 Notice, the Watermaster cites what it presumably thinks is the most compelling language
18 regarding an opt-out requirement as: “[a]ll persons who receive this Notice should respond, so that
19 the parties and the Court will know whether you are a class member or not.” Dkt. 128160 at 5 (citing
20 2009 Notice) (emphasis added). Not only is this instruction permissive, using “should” rather than
21 mandatory language such as “must,” but it also clearly indicates that some recipients of the 2009
22 Notice may not be class members. The 2009 Notice states in its opening paragraph that recipients
23 “may be a member of the Class” then “you have been designated as a possible class member,” before
24 stating “You are **NOT in the Class** if ... [y]ou have pumped 25 acre-feet or more of groundwater
25 ... in any calendar year since 1946.” 2009 Notice at 1-2 (emphasis in original).

26 While it is correct that the 2009 Notice goes on to state “[a]ll persons who receive this notice
27 *should* respond,” it also states in the same section that “Class Members should complete and return
28 the attached response form.” 2009 Notice at 2 (emphasis added). These two sentences are at odds

1 with one another, and at best leave ambiguity for a person who has already been told, in plain terms
2 and with deliberate emphasis, “**you are NOT in the Class**” if you pumped more than the class limit
3 at any time. The lawyers and parties who prepared and disseminated it and who focused on this
4 litigation for years may find the 2009 Notice to be clear, but it is objectively reasonable that a
5 recipient like LVRP would not. LVRP never so much as dipped a toe in groundwater litigation, in
6 2009 had only recently purchased its property, and knew only that it had pumped significantly more
7 than the expressly stated class limit in each of the three years prior to the 2009 Notice, such that it
8 was not a member of the Class, and therefore may not understand that a response was required.

9 The Watermaster cites to language in the *Notice of Partial Class Action Settlement for the*
10 *“Small Pumper” Class Action* that was mailed to potential class members on or about November 6,
11 2013 (“2013 Notice,” Dkt. 7678 at Ex. A) and the *Notice of Proposed Settlement for the “Small*
12 *Pumper” Class Action and Settlement Hearing* that was mailed on or about April 3, 2015 (“2015
13 Notice,” Dkt. 9968 at Ex. A) in support of its position that LVRP is a member of the Small Pumper
14 Class, but these notices contain the same defects as the 2009 Notice for a party in LVRP’s position.
15 Specifically, *immediately after* stating “[y]ou were sent a Class Notice in 2009, and did not choose
16 to opt out of the class at that time” the 2013 Notice states in clear terms:

17 You are **not in the class** if you fall within one of the categories set forth below: A. You have
18 pumped 25 acre-feet or more groundwater for use on that parcel in any calendar year since
19 1946.

20 Dkt. 7678 at Ex. A at ¶¶ 5-6 (emphasis added). There is no way that LVRP could read these
21 provisions together to mean anything other than it was not in the class, even if it received the 2009
22 Notice. The 2015 Notice also states that the “Class comprises persons who are pumping or have
23 pumped less than 25 acre-feet of groundwater during any year from 1946 to the present,” Dkt. 9968
24 at Ex. A ¶ 2, then repeats this statement (with minor changes) again in the following paragraph, *id.*
25 at ¶ 3. It then goes on to say “you are not required to do anything, unless you wish to object to the
26 settlement,” *id.* at ¶ 5. By stating that property owners are not class members if they pumped more
27 than the class limit in any year, the 2013 and 2015 Notices made it objectively impossible for LVRP
28 to conclude that its critical water right would be stripped because it previously failed to “opt out” of
a class it never belonged to.

1 The *Summary Notice of Pendency of Class Action* (“2009 Summary Notice”) that was
2 published in local newspapers in August 2009 did not include the twenty-five acre-foot limitation,
3 but did point anyone who was interested to the 2009 Notice that did, and told landowners in clear
4 terms that they were “**NOT in the class**” if they ever exceeded that pumping limit. *See*, Watermaster
5 Notice of Errata, Dkt. 128165 at Ex. D. The *Summary Notice of Proposed Partial Class Action*
6 *Settlement Wood v. Los Angeles County Waterworks Dist. No. 40* (“2013 Summary Notice”) and
7 *Summary Notice of Proposed Class Action Settlement in Wood v. Los Angeles County Water Works*
8 *Dist. No. 40, et al.* (“2015 Summary Notice”) that were published in local newspapers in November
9 2013 and April 2015, respectively, in each instance did state the twenty-five acre-foot class limit.
10 Dkt. 7679 at Ex. 3; Dkt. 9969 at Ex. 1. There is simply no way that LVRP, which by November
11 2013 had pumped above the class limit for more than seven years and by April 2015 for nearly nine,
12 could have concluded that the 2013 and 2015 Summary Notices applied to it or required action.

13 While LVRP does not have any record of receiving the various notices related to the Small
14 Pumper Class, based on their content it would have been objectively reasonable for LVRP to
15 determine that: it was not a member of the class, and therefore did not need to opt out or take any
16 other action.

17 C. **The Authorities Cited by the Opposition Parties Do Not Address Defective**
18 **Content of Class Notices or Class Definitions.**

19 The cases cited by the Watermaster and Stipulating Parties only support the general,
20 uncontroversial proposition that a class member who declines to opt out may not do so after the
21 deadline has passed merely because it is dissatisfied with the settlement terms class counsel
22 achieved. *See, e.g., Officers for Justice v. Civil Service Comm’n of City and Cty. Of San Francisco*,
23 688 F.2d 615, 634-35 (9th Cir. 1982). While the Judgment, via the Small Pumper Class Action
24 Settlement that it attaches and incorporates, does state that “[t]he Court has jurisdiction over all
25 parties to the Settlement Agreement including Class members who did not timely opt out of the
26 Settlement,” Dkt. 11020 at Ex. C, p. 2 ¶ A, and “[a]ll members of the Class shall be subject to all
27 the provisions of ... this Judgment as entered by the Court,” *id.* at p. 4 ¶ K, it also itself includes the
28 same definition of the Small Pumper Class that was included in the 2009, 2013 and 2015 Notices,

1 *id.* at p. 3, ¶ F. LVRP’s position is the same: It never fell within the class definition, so was never
2 required to opt out of a class it did not belong to in the first place. LVRP is not, like the class
3 representative that sought to opt out in *Officers for Justice* was, a participant in the litigation that
4 was dissatisfied with the terms of a binding settlement class counsel achieved. It is also not a party
5 that knowingly pumped water and sought to evade detection. On the contrary, since buying its
6 property in 2006, LVRP has at all times maintained a large commercial nursery in plain view from
7 one of the main thoroughfares in the South East Subarea of the Basin. Not surprisingly, in the
8 Watermaster’s own words, LVRP was contacted in July 2018 “[u]nder the mistaken assumption that
9 LVRP was not a Small Pumper Class Member.” Dkt. 128160 at 6.

10 The fact that the Watermaster, an entity that is born of and exists solely to implement the
11 Judgment and Physical Solution, instinctively believed that a large commercial nursery could not
12 be a member of the Small Pumper Class illustrates the objective reasonableness of such a
13 conclusion. Indeed, Class Counsel stated in documents filed in the Adjudication that the intent of
14 the class definition was to reach typical, similarly situated, small scale, *domestic* users of
15 groundwater.¹⁰ On the other hand, it is objectively *unreasonable* to assume that LVRP, like the class
16 representative in *Officers for Justice*, was aware of, monitoring, and dissatisfied with the outcome
17 in the Small Pumper Class Action, and as the Watermaster suggests “is requesting a second – or
18 even third – opportunity to opt-out of the Small Pumper Class” because it is suddenly dissatisfied
19 with the three acre-foot per parcel Small Pumper allocation. Dkt. 128160 at 9. Had LVRP
20 understood that the water rights appurtenant to its property were being litigated and impacted via
21 the Small Pumper Class Action, it would have participated. Indeed, the entire purpose of LVRP’s
22 significant investment in property was dependent upon a secure source of groundwater.

23 **D. The Stipulating Parties’ Procedural and Evidentiary Arguments Are Not**
24 **Applicable and Otherwise Not Determinative.**

25 The Stipulating Parties argue that LVRP’s Motion should be denied because it does not
26 attach a complaint or answer in intervention, as may be required under *Code of Civil Procedure*

27
28

¹⁰ *See, supra*, n. 9.

1 section 387(c). Dkt. 128159 at 14. This argument is a red herring, and is not determinative because
2 the primary basis of LVRP's Motion is Section 20.9 of the Judgment, titled "Intervention After
3 Judgment," which expressly creates a mechanism for non-parties like LVRP to intervene. As
4 discussed above, LVRP was never a member of the Small Pumper Class by definition. LVRP is in
5 fact a "Person who is not a Party [to the Judgment] ... and who proposes to Produce Groundwater
6 from the Basin," satisfying the requirements of Section 20.9. If the Court should determine
7 otherwise, and also that in this irregular situation (post-judgment intervention) a complaint or
8 answer in intervention must be attached to a motion for leave to intervene, the Court could simply
9 Order LVRP to file such a pleading as a condition of its intervention. But the purpose of this
10 requirement appears to be to allow the parties to an action to understand the factual basis of the
11 would-be intervener's involvement, all of which is described in LVRP's Motion papers.

12 The Stipulating Parties also argue that LVRP's Motion is an impermissible collateral attack
13 on the Judgment and based on that characterization make certain "evidentiary objections" on the
14 basis that a final judgment may not be challenged by collateral attack unless a jurisdictional defect
15 appears on the judgment roll. Dkt. 128159 at 4-5, 5-13. As with the Stipulating Party's *Code of Civil*
16 *Procedure* section 387(c) argument, these arguments are hinged on a determination of whether
17 LVRP is presently a Party to the Judgment. If the Court determines that LVRP is not, these
18 arguments are moot and the Judgment provides an express method for intervention and there is no
19 colorable argument that invoking Section 20.9 is an impermissible collateral attack.

20 **III. CONCLUSION**

21 For the foregoing reasons, non-party Long Valley Road, L.P. respectfully requests that the
22 Court grant its *Motion for Leave to Intervene in Judgment*.No

24 DATED: October 25, 2018

KELLEY DRYE & WARREN LLP
Michael J. O'Connor
Andrew W. Homer



26
27
28

Andrew W. Homer
Attorneys for Defendant
Long Valley Road, L.P.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 10100 Santa Monica Boulevard, Twenty-Third Floor, Los Angeles, California 90067-4008.

On October 25, 2018 I served true copies of the following document(s) described as:

- **LONG VALLEY ROAD, L.P.'S REPLY IN SUPPORT OF MOTION TO INTERVENE IN JUDGMENT**

on the interested parties in this action as by placing the true copy:

BY ANTELOPE VALLEY WATERMASTER'S ELECTRONIC DOCUMENT SERVICE: I uploaded the document(s) listed above to www.avwatermaster.org, for electronic service on counsel of record listed on the Electronic Service List for Case No. 1-05-CV-049053.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 25, 2018, at Los Angeles, California.



Wanda Taylor