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ANTELOPE VALLEY UNITED MUTUALS GROUP;
and Cross-Defendants, ADAMS BENNETT
INVESTMENTS, LLC; MIRACLE IMPROVEMENT
CORPORATION dba GOLDEN SANDS MOBILE
HOME PARK, aka GOLDEN SANDS TRAILER
PARK, named as ROE 1121; ST. ANDREW'S
ABBNEY, INC., named as ROE 623; SERVICE ROCK
PRODUCTS, L.P.; and SHEEP CREEK WATER
COMPANY, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

Coordination Proceeding	)	Judicial Council Coordination
Special Title (Rule 1550(b))	)	Proceeding No. 4408
)	
ANTELOPE VALLEY	)	Santa Clara Case No. 1-05-CV-049053
GROUNDWATER CASES	)	Assigned to the Honorable Jack Komar
	)	Department 17C
Including <u>Consolidated</u> Actions:)	
Los Angeles County Waterworks District	)	MOTION FOR ORDER INTERPRETING
No. 40 v. Diamond Farming Co.	)	JUDGMENT REGARDING
Superior Court of California, County of Los	)	WATERMASTER FORMATION
Angeles, Case No. BC 325 201)	
	)	<i>[Concurrently filed with Declarations</i>
Los Angeles County Waterworks District	)	<i>of Michael Duane Davis and John</i>
No. 40 v. Diamond Farming Co.	)	<i>Ukkestad; and [Proposed] Order]</i>
Superior Court of California, County of)	
Kern, Case No. S-1500-CV-254-348	)	Judge: Hon. Jack Komar, Judge
)	
Wm. Bolthouse Farms, Inc. v. City of	)	DATE: MAY 17, 2016 [RESERVED]
Lancaster	)	TIME: 9:00 a.m.
Diamond Farming Co. v. City of	)	DEPT: Room 222
Lancaster	)	Los Angeles Superior Court
Diamond Farming Co. v. Palmdale	)	111 N. Hill Street
Water Dist.	)	Los Angeles, California
Superior Court of California, County of)	
Riverside, consolidated actions, Case Nos.)	
RIC 353 840, RIC 344 436, RIC 344 668)	
)	
AND RELATED ACTIONS.)	
)	

1 **TO THE COURT, ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on May 17, 2016 at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, at 111 North Hill Street, Los Angeles, California, in Room 222, Cross-
4 Defendants / Cross-Complainants, **ANTELOPE VALLEY UNITED MUTUALS GROUP**
5 [comprised of Antelope Park Mutual Water Co., Aqua-J Mutual Water Co., Averydale Mutual
6 Water Co., Baxter Mutual Water Co., Bleich Flat Mutual Water Co., Colorado Mutual Water
7 Co., El Dorado Mutual Water Co., Evergreen Mutual Water Co., Land Projects Mutual Water
8 Co., Landale Mutual Water Co., Shadow Acres Mutual Water Co., Sundale Mutual Water Co.,
9 Sunnyside Farms Mutual Water Co., Tierra Bonita Mutual Water Co., West Side Park Mutual
10 Water Co., and White Fence Farms Mutual Water Co., Inc.]; and Cross-Defendants, **ADAMS**
11 **BENNETT INVESTMENTS, LLC** and **SERVICE ROCK PRODUCTS, L.P.** (collectively,
12 “Moving Parties”) will and hereby move for an Order of the Court interpreting certain provisions
13 of the Judgment of the Court entered on December 28, 2015, pertaining to the formation of the
14 Watermaster.

15 Specifically, Moving Parties request an Order of the Court confirming that: (1) the
16 Judgment requires that the organizational rules of the Watermaster must be fully established,
17 including procedures for the selection of the two initial landowner Watermaster seats
18 (“Landowner Seats”), before the Watermaster Board is seated and it appoints the Engineer to
19 prepare the operational Watermaster rules; (2) the Judgment precludes public agencies, including
20 public agencies listed in Exhibit 4 to the Physical Solution, from holding either of the two
21 Landowner Seats and from voting in the selection of those seats, including in the event that a
22 public agency acquires the Overlying Production Rights of a party listed in Exhibit 4; and (3) the
23 Judgment requires that each of the two Landowner Seats is intended to provide representation for
24 distinct landowner interests (“Motion”).

25 Moving Parties bring this Motion pursuant to California *Code of Civil Procedure* Section
26 664.6 and Section 6.5 of the Physical Solution, which provides for this Court’s continuing
27 jurisdiction, and full power and authority, to make such further or supplemental orders or
28

1 directions as may be necessary or appropriate to interpret, enforce, administer or carry out the
2 Judgment, upon a motion by a Party.

3 This Motion is based upon this Notice, the Memorandum of Points and Authorities in
4 Support hereof, the Declaration of Michael Duane Davis, the Declaration of John Ukkestad, the
5 various documents attached thereto, all pleadings, documents, and evidence on file in this action,
6 on such oral and documentary evidence as may be presented at the hearing on this Motion, and
7 on any other matters properly before the Court.

8
9 DATED: April 13, 2016.

Respectfully submitted,

10 GRESHAM SAVAGE NOLAN & TILDEN, PC

11
12 By:


13 MICHAEL DUANE DAVIS, ESQ.
14 DEREK R. HOFFMAN, ESQ.
15 Attorneys for A. V. UNITED MUTUALS GROUP,
16 ADAMS BENNETT INVESTMENTS, LLC, and
17 SERVICE ROCK PRODUCTS, L.P.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The Judgment¹ entered by this Court on December 28, 2015 marked a significant and
4 historic event in this Antelope Valley Groundwater Adjudication (“Adjudication”). The Physical
5 Solution that comprises part of that Judgment is a product of years of litigation and negotiation.
6 Now, much attention is focused on the establishment of the Watermaster, the *organizational*
7 procedures for which are not detailed in the Physical Solution.

8 Recent actions and positions taken by AVEK and other Parties reveal stark differences in
9 their understanding of provisions in the Physical Solution with respect to the formation of the
10 Watermaster and other important items regarding voting privileges and the development of the
11 Watermaster rules. Those actions have resulted in a lack of fundamental fairness, transparency,
12 and due process in the Watermaster formation activities presently taking place.

13 Without a clarifying order of this Court as requested by this Motion, the Judgment and
14 Physical Solution are at significant risk of being incorrectly and improperly implemented, the
15 Parties to the Judgment will be deprived of fundamental fairness and due process, and the current
16 actions begin taken by AVEK and others would likely set a questionable precedent for
17 Watermaster rule-making in the future.

18 **STATEMENT OF FACTS**

19 **I. The Physical Solution Is Generally Silent About the Organization of the Watermaster.**

20 The Physical Solution contains general but very incomplete guidance on the initial
21 formation of the Watermaster. Section 18.1.1. provides for a five-member Watermaster Board,
22 but it specifically identifies only two of the five seats (“Watermaster Seats”) – a seat for Los
23 Angeles County Waterworks District No. 40 (“Waterworks District No. 40”) and a seat for
24 AVEK. (Declaration of Michael Duane Davis, ¶¶3-4, Exhibit 2.) One of the remaining
25

26
27 ¹ The *Notice of Entry of Judgment* was filed on December 28, 2015 [Court Document No. 11021], and included as exhibits the
28 Court’s Judgment executed on December 23, 2015, as well as all exhibits to that Judgment, including but not limited to the
[Proposed] Judgment and Physical Solution adopted by the Court (“Physical Solution”). Unless specifically noted
otherwise, all references made herein to the “Judgment” are intended to include the Physical Solution and the other exhibits
comprising the entirety of the Judgment.

1 Watermaster Seats is reserved for another Public Water Supplier², and the other two remaining
2 seats are reserved for landowner representatives (“Landowner Seats”). Other than Section
3 18.1.1., the Physical Solution is silent as to the Watermaster *organizational* rules and procedures.

4 The Physical Solution establishes the requirements for and provides the process by which
5 the Watermaster *operational* rules will be established, though it wholly fails to delineate between
6 the organizational and operational rules. Instead, it simply states that the “Court may adopt
7 appropriate rules and regulations prepared by the Watermaster Engineer and proposed by the
8 Watermaster for conduct pursuant to this Judgment.” (Physical Solution, Section 18.4.2.) As a
9 result, a strict reading of the Physical Solution creates a “Catch-22” regarding the timing and
10 responsibility for preparation of the Watermaster *organizational* rules: the Watermaster “rules”
11 cannot be drafted until after the Watermaster Engineer (“Engineer”) has been hired; and the
12 Engineer cannot be hired until after the Watermaster Board is fully seated; yet, no procedure is
13 specified for the selection of the Watermaster Board or what interests the two Landowner Seats
14 will represent.

15 **II. Fundamental Premises of the Judgment and Physical Solution.**

16 Virtually every Party agreed to the Physical Solution with the understanding that, when it
17 was entered by the Court, they would be afforded basic due process rights regarding the
18 implementation of the Physical Solution, that the implementation processes would be open and
19 transparent, and that they would be treated with fundamental fairness by the other Parties.
20 (Declaration of John Ukkestad (“Ukkestad Dec.”), ¶ 2; Davis Dec., ¶5.) These fundamental
21 premises were at the core of the negotiations for virtually every provision of the Physical
22 Solution. As the Parties negotiated the composition, structure, duties and functions of a
23 Court-appointed Watermaster, they expressed particular concern that the Watermaster Board
24 must represent the diverse interests of the hundreds of Parties to the Adjudication. (Ukkestad
25
26

27 ² “Public Water Suppliers” are defined in Section 3.5.35 of the Physical Solution to include Waterworks District No. 40,
28 Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation District, California Water Service Company,
Desert Lake Community Services District, North Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch
Irrigation District, Rosamond Community Services District, and West Valley County Water District.

Dec., ¶ 2.) The Watermaster Board was made subject to the Brown Act. (Physical Solution, Section 18.4.11.)

III. The Parties Have Recognized the Importance of Broad Watermaster Representation For Years, As Reflected in the “Antelope Valley Accord.”

Negotiations regarding the formation, membership, duties and functions of a Court-appointed Watermaster began years before the Physical Solution was presented to the Court for approval. (Davis Dec., ¶5.) In an effort to reach a settlement in 2010, principals for parties representing the vast majority of pumping in the Basin held settlement discussions facilitated by mediator Jim Waldo. Those parties developed a set of principles that they suggested be used in developing a final, comprehensive settlement (often referred to as the “Waldo Accord” or “Antelope Valley Accord”). (Davis Dec. ¶¶6-7, Exhibit 3.)³ The Watermaster was one of the primary subjects of those discussions. The Antelope Valley Accord expressly stated that “[t]he intent is to have a **balanced Board**, represented by the **diverse interests** in the Antelope Valley, and specifically including Board representation for each management area and [Special Emphasis Area] in order to achieve Basin-wide solutions.” (Davis Dec., Ex. 3, p. 14, emphasis added.) Parties representing a vast majority of the pumping in this Adjudication participated in crafting the Antelope Valley Accord, including but not limited to the Antelope Valley United Mutuals Group, AVEK, AGWA, Los Angeles County Sanitation District Nos. 14 and 20, the City of Lancaster, the City of Palmdale, Palmdale Water District, Bolthouse Properties, Tejon Ranchcorp, WAGAS Land Company, the Willis Class, the Wood Class and Grimmway Farms (including Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC). (Davis Dec., ¶¶7-9, Exs. 3 and 4.)⁴ Though clearly not determinative, the Antelope Valley Accord evidences the concern

³ A July 12, 2010 version of the “Antelope Valley Accord” was attached as Exhibit “A” to the City of Lancaster’s July 26, 2010 *Ex Parte Application of “Moving Principals” for Continuance of Trial* [Doc. No. 3799]. Waterworks District No. 40 filed an *Objection and Motion to Strike Submission of “Waldo Accord” and Related Documents* on July 28, 2010 [Doc. No. 3822]. The Court overruled the objection and denied the motion to strike, as reflected in the Court’s Minute Order of July 29, 2010 [Doc. No. 3824.] (See Davis Dec., ¶¶7-8, and Exhibits 3-6 thereto.) Thus, the Antelope Valley Accord is deemed properly within the record.

⁴ See specifically page 2 of the Antelope Valley Accord, and pages “2” and “3” of Section “II” (the Memorandum of Points and Authorities) of the City of Lancaster’s *Ex Parte Application of “Moving Principals” for Continuance of Trial*, both of which are attached to the Davis Declaration.

1 that the Parties have for the Watermaster organizational issues, and it sheds light on the direction
2 that the Parties were taking to address those issues.

3 **IV. The Parties Determined to Establish Watermaster Organizational Procedures After**
4 **Entry of Judgment.**

5 Without delving into the details of the mediation sessions held by Justice Robie in 2010-
6 2012 (because the Court has not issued a ruling against the mediation privilege protecting those
7 proceedings), discussions continued among the participating parties regarding the make-up of the
8 Watermaster Board. Settlement discussions continued in earnest long after the final mediation
9 session with Justice Robie and particularly in the months leading up to the presentation of the
10 Physical Solution to the Court. During those final months, it became clear that while the
11 Stipulating Parties could agree on the total number of Watermaster Seats and the specific entities
12 that would fill *some* of those seats (i.e. Waterworks District No. 40 and AVEK), no consensus
13 was reached on who would fill the second Public Water Supplier Seat or what overlying interests
14 the Landowner Seats would represent, nor was there a consensus regarding the process that
15 would be utilized to organize the initial Watermaster Board. Rather than holding up seeking the
16 Court's approval of the Physical Solution, the Stipulating Parties agreed upon the Section 18.1.1.
17 framework, with the understanding that the specific procedures for implementing that framework
18 would be addressed after the Judgment was entered. (Davis Dec., ¶12.)

19 **V. AVEK's Recent Actions Attempting to Form the Watermaster Are Not Consistent**
20 **with the Terms or Intent of the Physical Solution.**

21 Recent developments and statements made in public indicate that discussions,
22 negotiations and agreements have occurred behind closed doors concerning the formation of the
23 Watermaster Board and even concerning the selection of the Watermaster Engineer. Almost
24 immediately after the Court's entry of the Judgment and Physical Solution, the Moving Parties,
25 and many of the other Stipulating Parties for that matter, were surprised to have learned that a
26 purported "first watermaster meeting" had already been announced in a December 25, 2015 news
27 article in the Antelope Valley Press. (Davis Dec., ¶13, Ex. 7 and Ex. 8.) The article declared
28 that the meeting would be held on January 21, 2016 at Lancaster City Hall. It quoted Mr. Frank
Donato of AVEK, saying "We only know two of the five members for sure. I don't know who

1 the other three people are. I don't know who each prospective group will appoint." (Davis Dec.,
2 ¶13, Ex. 7.)

3 Ten days later, on January 5, 2016, AVEK circulated a "Notice of Public Meeting" for
4 January 21, 2016, subtitled, "Notice of Discussion of Water Master Organization" to be held at
5 Lancaster City Council Chambers (Davis Dec., ¶14, Ex. 9.) The notice stated that "[a] public
6 meeting will be held to organize the Antelope Valley Watermaster." Citing Article 18 of the
7 Physical Solution, the notice states that the process for selection of Landowner Seats "could be
8 further discussed on the 21st to expedite the final composition of the Watermaster on or before
9 February 15, 2016."

10 On January 12, 2016, Los Angeles County Counsel sent a letter to counsel for AVEK
11 indicating that the proposed agenda for AVEK's January 21, 2016 meeting was overreaching and
12 should be limited in its scope to a discussion on how to fill the Advisory Committee seats.
13 (Davis Dec., ¶15, Ex. 10.) Specifically, the letter took the position that any discussion of
14 Watermaster rules was pre-mature until the Watermaster had been duly established.
15 Nevertheless, on January 20, 2016, AVEK posted an agenda for the January 21, 2016 meeting
16 that included, along with the notice, an extensive packet of meeting materials, a "Suggested
17 Antelope Valley Watermaster Organizational Plan" pushing for the Watermaster Board to be
18 seated by March 2016. (Davis Dec., ¶16, Ex. 11.) Notably, the materials included a statement
19 asserting AVEK's self-declared role as "Facilitator" of the Watermaster formation process.
20 (Davis Dec., ¶16, Ex. 11.)

21 At that January 21, 2016 meeting, AVEK Board Member Mr. Robert Parris, who had
22 only recently been appointed as the AVEK representative for the AVEK Watermaster Seat, took
23 license from his perch on the dais to assume control of the meeting. (Ukkestad Dec., ¶4.)
24 AVEK also arranged for Mr. Robert Wagner of the consulting civil engineering firm Wagner &
25 Bonsignore to deliver a presentation as if he were already selected as the Watermaster Engineer.
26 (Davis Dec., ¶17.) Additionally, AVEK Assistant General Manager Mr. Dwayne Chisam
27 declared that AVEK will take direction from the Watermaster regarding administrative matters.
28 (Davis Dec., ¶17.) However, while Section 18.1.4. of the Physical Solution provides that

1 Watermaster administrative functions may be accomplished by AVEK pursuant to duly adopted
2 Watermaster rules, the Watermaster Board has not yet been seated, nor have such rules been
3 adopted. (Davis Dec., ¶17.) Also sitting at the dais was AGWA member Mr. John Calandri,
4 who stated with reference to the selection of the Landowner Seats that “What we have to do will
5 be monumental. The landowners are fractionalized.” (Davis Dec., ¶17, Ex. 12.)

6 After the January 21, 2016 meeting, in an effort to reach a consensus regarding the
7 process for filling the two Landowner Seats, counsel for the Moving Parties posted on the
8 Court’s website and circulated a letter on January 29, 2016, containing a proposed set of
9 procedures. Counsel for various Parties held a conference call that day to discuss that proposal.
10 (Davis Dec., ¶18, Ex. 13) On February 3, 2016, counsel for the Moving Parties posted and
11 circulated a revised set of proposed procedures pursuant to the January 29th conference call,
12 which identified provisions for which there appeared to be general conceptual agreement and
13 provisions for which further discussions were needed. (Davis Dec., ¶20, Ex. 15.) No further
14 conference calls have taken place to conclude that effort to develop agreed procedures. (Davis
15 Dec., ¶20).

16 Meanwhile, AVEK continues to assume authority to direct the organization of the
17 Watermaster and large landowner parties continue to take the position that they have the right to
18 control the two Landowner Seats, thereby depriving the other diverse landowner interests of
19 representation on the Board. At AVEK’s February 17, 2016 “watermaster formation” meeting,
20 Mr. John Calandri and Mr. Gary Van Dam addressed the group from the podium; during which,
21 Mr. Van Dam stated that the two Landowner Seats were “the farmers’ seats.” (Ukkestad Dec.,
22 ¶5.)

23 At another AVEK “watermaster formation” meeting on March 31, 2016, Tejon
24 representative Mr. Dennis Atkinson stated that it was his understanding that AVEK, Waterworks
25 District No. 40, and the representative holding the second Public Water Supplier Watermaster
26 Seat had already come to an agreement on who the Watermaster Engineer would be. AVEK
27 Assistant General Manager Mr. Dwayne Chisam was present at that moment, and he did not
28 refute that statement. Counsel for Waterworks District No. 40 subsequently expressed his belief

1 that no such agreement had been made regarding the selection of the Watermaster Engineer, at
2 least not by Waterworks District No. 40. (Ukkestad Dec., ¶7.)

3 In short, the basic premises under which the Physical Solution was developed are being
4 ignored because of the lack of a comprehensive set of formal organizational procedures for the
5 selection of the Watermaster Board.

6 **VI. Parties' Contentions Regarding Interpretation of Watermaster Provisions Require
Judicial Clarification and Assistance.**

7 Based on the assertions and statements that have been made since the Judgment was
8 entered in December 2015, it is clear that a significant number of Parties disagree on the
9 interpretation of certain provisions in the Physical Solution, particularly those pertaining to the
10 procedures for the organization of the Watermaster, voting privileges and interests to be
11 represented by the two Landowner Seats. Some of the disputed contentions are:

- 12 • Whether the Parties should begin preparing organizational Watermaster rules by way of
13 the “watermaster organizational meetings” or otherwise, and have them approved by the
14 Court prior to the establishment of the Watermaster Board.
- 15 • Whether the Watermaster rules that are to be prepared by the Engineer can and should
16 contain organization provisions including how the Landowner Seats are filled and what
17 landowner interests the Landowner Seats should represent.
- 18 • Whether Section 18.1.1. of the Physical Solution entitles all parties listed in Exhibit 4 to
19 vote for the selection of the two Landowner Seats, despite the prohibition against public
20 agencies holding either of those seats and despite the generally understood use of the
21 term “landowners” as private landowner parties.
- 22 • Whether public agencies that might acquire the Overlying Production Rights of Parties on
23 Exhibit 4 would also acquire any accompanying voting privileges for the selection of the
24 Landowner Seats, and whether public agencies like AVEK could hold either of those
25 Landowner Seats.
- 26 • Whether the Landowner Seats can and should be filled by Parties representing the same
27 landowner interests (e.g. strictly agricultural interests or strictly large agricultural
28

interests), or whether the Physical Solution instead requires representation of diverse landowner interests.

Despite these critical open issues, AVEK continues facilitating “watermaster organizational meetings” in an effort to fast-track the formation of the Watermaster. (Davis Dec., ¶ 22, Ex. 16; ¶ 23, Ex. 17; ¶24, Ex. 18; ¶25, Ex. 19). The development of the *organizational* Watermaster rules without the assistance of the Court will likely set a questionable precedent for the rule-making process going forward. More importantly, if the disputed contentions are not resolved before the process of selecting the Landowner Seats takes place, the die could well be cast without the Court having considered and approved the unsanctioned resulting “rules” governing the Watermaster organization as well as operational rules, as the Judgment requires.

ARGUMENT

I. This Court Has Jurisdiction to Interpret the Physical Solution.

A. The Court has Jurisdiction under California Code of Civil Procedure Section 664.6 to Interpret the Judgment.

Section 664.6 of the California *Code of Civil Procedure* expressly 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 powers of the Court under Section 664.6 include the power to interpret the terms of the parties’ settlement agreement. (*Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367.) If the parties have stipulated that the Court retain jurisdiction to see a judgment through full implementation, that reservation includes the power of interpretation.

B. The Physical Solution Authorizes this Court to Interpret the Judgment Upon a Noticed Motion by a Party.

Section 6.5 of the Physical Solution expressly provides that:

“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 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 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.)

1 This language is derived from two provisions of law. The first is California *Code of Civil*
2 *Procedure* Section 664.6. California courts can and often do interpret settlement agreements
3 under that authority to ensure that they are properly implemented. (*Fiore v. Alvord* (1985) 182
4 Cal.App.3d 561.) Like all contracts, a stipulation must be interpreted to effectuate the mutual
5 intent of the parties, the terms being determined by the parties' objective manifestations of intent.
6 (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632; Cal. Code Civ. Proc.
7 § 1636.)

8 The opinion in *Central and West Basin Water Replenishment Dist. v. Southern Cal.*
9 *Water Co.* (2003) 109 Cal.App.4th 891 ("*Central and West Basin Water*") is the second
10 provision of law on which Section 6.5 is based. In *Central and West Basin Water*, a stipulated
11 judgment reserved trial court jurisdiction "to provide for such other matters as are not
12 contemplated by the judgment and which might occur in the future, and which if not provided for
13 would defeat any or all of the purposes of this judgment." The stipulated judgment was silent
14 regarding the allocation of storage space in the basin, and a party filed a motion to amend the
15 judgment to address that issue. The Court of Appeal affirmed that the provision gave the trial
16 court jurisdiction to hear the motion and amend the judgment as requested, citing *City of L.A. v.*
17 *City of Glendale* (1943) 23 Cal.2d 68, 81 ("[t]he retention of jurisdiction to meet future problems
18 is regarded as an appropriate exercise of equitable jurisdiction in litigation over water rights,
19 particularly when the adjustment of substantial public interests is involved"). (*Central and West*
20 *Basin Water*, 109 Cal.App.4th at 893.) Notably, *Central and West Basin Water* distinguished the
21 continuing jurisdiction provision in that case from an analogous provision at issue in *Big Bear*
22 *Municipal Water Dist. v. Bear Valley Mutual Water Co.* (1989) 207 Cal.App.3d 363, 370 ("*Big*
23 *Bear*"). The *Big Bear* provision limited the trial court's continuing jurisdiction to the
24 "interpretation, enforcement or carrying out this Judgment," but it did not authorize modification
25 of the terms of the judgment. (See *Central and West Basin Water*, 109 Cal.App.4th at 903.)

26 Section 6.5 combines both California *Code of Civil Procedure* Section 664.6 and *Central*
27 *and West Basin Water*, confirming that this has Court broad continuing jurisdiction powers. The
28 Moving Parties' request for an order *interpreting* the Judgment is well within those parameters.

1 **II. The Watermaster Organizational Rules Must Be Established Before the Engineer Is**
2 **Selected and Prepares Operational Rules—Not the Other Way Around.**

3 The Judgment requires all Watermaster Seats to be filled before the Watermaster
4 Engineer can prepare the Watermaster rules. “The whole of a contract is to be taken together, so
5 as to give effect to every part, if reasonably practicable, each clause helping to interpret the
6 other.” (Cal. Civ. Code § 1641.) Contracts should also be interpreted to avoid absurdity. (Cal.
7 Civ. Code § 1638.) Article 18 of the Physical Solution provides a logical and sequential
8 framework. First, the two Landowner Seats and the second Public Water Supplier Seat must be
9 filled. (Physical Solution, Section 18.1.1.) Once the Watermaster Board is established, it *then*
10 selects the Engineer by *unanimous* vote of *all* board members. (Sections 18.1.2.1, 18.1.2.4 and
11 18.4.1.) The Engineer *then* prepares appropriate rules, which the Watermaster proposes to the
12 Court for approval and adoption. (Section 18.4.2.)

13 As a preliminary step, the procedures by which the two Landowner Seats (and
14 presumptively the second Public Water Supplier seat) are initially filled must be established
15 before the Watermaster Board can be formed. These procedures will comprise a distinct set of
16 *organizational* rules. Once established, those organizational rules will become part of the overall
17 Watermaster rules, but not through the same process by which the Engineer develops the
18 *operational* rules. The same is true of the process by which the Public Water Suppliers’ second
19 Watermaster Seat is filled. Section 18.1.1. of the Physical Solution establishes certain voting
20 protocols for the selection of the Landowner Seats, but it goes no further in dictating that
21 process. Section 18.4.2. provides that the entirety of the Watermaster rules are to be submitted to
22 and approved by the Court following a public hearing and tentative approval process.

23 The Physical Solution prescribes the express *operational* powers and duties of the
24 Watermaster (Section 8.4.) and the Engineer (Section 18.5.). The Watermaster is authorized to
25 establish rules for *operational* matters including: [1] the allocation of Imported Water if
26 necessary to fully meet Replacement Water obligations (Section 9.2.), [2] transfers of Production
27 Rights (Section 16.1.), [3] AVEK’s *potential* administrative role (Section 18.1.4.), [4]
28 assessments (Section 18.4.12.), [5] determining Production and requiring individual meters
(Section 18.5.5.), [6] Production reports (Section 18.5.12.), [7] Storage Agreements (Section

1 18.5.14.), and [8] Annual Reports (Sections 18.5.17. and 18.5.18.6.) The Judgment does not
2 authorize the Engineer to write the Watermaster *organizational* rules, including the procedures
3 for filling the Landowner Seats. The *organizational* rules must be established and subsequently
4 incorporated as a part of the overall Watermaster rules that are to be approved by the Court.

5 AVEK is a public agency that already holds a Watermaster Seat, and as explained below,
6 AVEK is not and should not be entitled to vote on or hold either of the Landowner Seats.
7 Consequently, AVEK's actions in noticing, holding and directing multiple "watermaster
8 organizational meetings" designed to hurriedly press through the selection of the Landowner
9 Seats is contrary to the Judgment and its intended implementation.

10 **III. The Judgment Does Not Intend for Any Public Agency to Hold or to Vote for**
Landowner Seats or to Acquire Landowner Voting Privileges.

11 Section 18.1.1. of the Physical Solution provides for the appointment and composition of
12 the Watermaster Board, in relevant part, as follows:

13 "The Court hereby appoints a Watermaster. The Watermaster shall
14 be a five (5) member board composed of one representative each
15 from District No. 40 and AVEK, a second Public Water Supplier
16 representative selected by District No. 40, Palmdale Water District,
17 Quartz Hill Water District, Littlerock Creek Irrigation District,
18 California Water Service Company, Desert Lake Community
19 Services District, North Edwards Water District, City of Palmdale,
20 City of Lancaster, Palm Ranch Irrigation District, and Rosamond
Community Services District, *and two (2) landowner Parties,*
exclusive of public agencies and members of the Non-Pumper
and Small Pumper Classes, selected by majority vote of the
landowners identified on Exhibit 4 (or their successors in
interest) based on their proportionate share of the total
Production Rights identified in Exhibit 4." (Emphasis added.)

21 The Moving Parties understand the emphasized language to mean two things. First,
22 neither public agencies, nor the members of the Non-Pumper or Small Pumper Classes, may hold
23 or vote on the selection of the two Landowner Seats. Rather, Article 18 assigns those functions
24 to the landowners, "exclusive of public agencies and members of the Non-Pumper and Small
25 Pumper Classes." The term "landowners" is used in the ordinary sense to mean *private*
26 landowners, and not public agencies. (See Cal. Civ. Code § 1644 [words of a contract to be
27 understood in ordinary and popular sense].) Accordingly, the two landowner seats shall be filled
28

1 by the private “*landowner* Parties ... selected by majority vote of the *landowners* ...” based upon
2 the private *landowners*’ proportionate share of the total Production Rights on Exhibit 4.

3 If Section 18.1.1. had intended to extend voting privileges to public agencies on Exhibit
4 4, it would have referred to holders of “Overlying Production Rights,” which is defined in the
5 Judgment as “the rights held by the Parties identified in Exhibit 4.”⁵ Instead, the voting privilege
6 clause of Section 18.1.1. assigns voting rights to the private “landowners identified on Exhibit 4
7 (or their successors in interest)”. Were it not so, then AVEK – a public agency that holds
8 Overlying Production Rights on Exhibit 4 comprising 5.022% of the Adjusted Native Safe Yield
9 and that *already holds a Watermaster Seat* – could exert considerable voting power in the
10 selection of the Landowner Seats and potentially control (or at least significantly influence) a
11 majority the Watermaster Board. The risk of an AVEK-controlled Watermaster Board is
12 especially acute when considering that AVEK acquired its Exhibit 4 status in the first place by
13 purchasing large tracts of overlying land in the Basin and that it may continue to expand with
14 purchases of additional Overlying Production Rights. Nevertheless, some Exhibit 4 Parties,
15 including AVEK, disagree and contend that public agencies like AVEK have the right to vote on
16 the selection of, if not hold, either or both of the Landowner Seats.

17 Second, the Moving Parties understand that the phrase “or their successors in interest” in
18 Section 18.1.1. does not authorize a Public Water Supplier⁶ or other public agency to acquire
19 Exhibit 4 *voting* privileges in the event that it acquires Exhibit 4 Production Rights. Section
20 16.2. of the Physical Solution provides that “Overlying Production Rights that are transferred to
21 Non-Overlying Production Right holders shall remain on Exhibit 4 and be subject to adjustment
22 as provided in Paragraph 18.5.10., but may be used anywhere in the transferee’s service area.”
23 The purpose of the requirement that those Overlying Production Rights must “remain on Exhibit
24 4” is primarily to ensure the integrity both of the Rampdown and the corresponding proportional
25
26

27 ⁵ Physical Solution, Section 3.5.26. Additionally, Section 5.1.1 defines “Overlying Production Rights” by stating simply, in
28 relevant part, that “[t]he Parties listed in Exhibit 4 have Overlying Production Rights.

⁶ References to Public Water Suppliers include the holders of “Non-Overlying Production Rights,” which are defined as the
rights held by Parties listed in Exhibit 3 to the Physical Solution. Physical Solution, Sections 3.5.21 and 5.1.6.

1 adjustments associated with the potential re-adjustment of the Native Safe Yield. (Physical
2 Solution, Section 18.5.10.)

3 Physical Solution Section 16.2. cannot be construed to provide a means for a Public
4 Water Supplier or other public agency to acquire *voting powers* along with Overlying Production
5 Rights. Imagine the significant impact to the landowners if, for example, Palmdale Water
6 District and/or Waterworks District No. 40 and/or AVEK were to acquire the Overlying
7 Production Rights *and accompanying voting powers* of, for example, Bolthouse Properties, LLC
8 (comprising more than 14% of the Adjusted Native Safe Yield), the Kyle parties (more than 5%),
9 the Calandri parties (more than 2.5%) or Mr. Nebeker (more than 2.5%). In variants of that
10 scenario, the Public Water Suppliers, who already hold two of the five Watermaster Seats, would
11 have the power to influence (and possibly control) the selection of the Landowner Seats and
12 potentially control the entire Watermaster Board. This was neither the intent of the Stipulating
13 Parties to the Judgment, nor would it be good policy.

14 The Court should clarify that, pursuant to the Judgment and Physical Solution, any voting
15 privilege associated with an Overlying Production Right is retired upon the acquisition of such
16 Overlying Production Right by a Public Water Supplier.

17 **IV. The Two Landowner Seats are Intended to Afford Representation of Distinct**
18 **Interests Within the Landowner Group.**

19 “A contract may be explained by reference to the circumstances under which it was
20 made, and the matter to which it relates.” (Cal. Civ. Code § 1647.) One of the matters to which
21 the make-up of the Watermaster relates is the representation of broad stakeholder interests in the
22 implementation of the Judgment. This concept has long been acknowledged among the
23 landowners and other overlying parties. In the Antelope Valley Accord, nearly all of the Parties
24 to this Adjudication, and the vast majority of overlayers, had conceptually approved the idea of a
25 diverse Watermaster board that represented the interests of appropriators, municipalities, diverse
26 overlying landowners, and other interests. In fact, the Antelope Valley Accord expressly states
27 that “[t]he intent is to have a **balanced Board**, represented by the **diverse interests** in the
28 Antelope Valley, and specifically including Board representation for each management area and
SEA in order to achieve Basin-wide solutions.” (Davis Dec., ¶¶6-7, 10; and Ex. 3, p. 14.) Not

1 surprisingly, a suggestion that was made during mediation with Justice Robie in 2012 that the
2 Watermaster function be assigned solely to the California Department of Water Resources
3 received no measurable support. Rather, the theme of broad Watermaster representation
4 continued to receive wide support. (Davis Dec., ¶11.)

5 The long-recognized need for broad landowner Watermaster representation was
6 ultimately infused into Physical Solution Section 18.1.1., which provides for *two* separate
7 Landowner Seats and contemplates that those seats would represent distinct landowner interests .
8 Those interests may be described based on categories of water use. California water law
9 recognizes many different types beneficial uses of water, including for domestic,
10 agricultural/irrigation, commercial/industrial, and recreational purposes. (See, e.g. Cal. Code
11 Regs. Tit. 23, § 659 et seq.) Among the concepts previously discussed among the Parties were
12 that the Landowner Seats should represent “large” and “small” interests or, alternatively,
13 agricultural and non-agricultural interests. Allowing both seats to be filled by persons
14 representing the interests of a single particular landowner use-group would deprive the other
15 landowners of adequate representation and would run afoul of the spirit and intent of the
16 Judgment. By way of comparison, the Public Water Suppliers’ seats are designed to afford
17 representation of distinct interests within their group. Waterworks District No. 40 holds one
18 Watermaster Seat, and the second Public Water Supplier Watermaster Seat will be filled from
19 among a diverse group of Public Water Suppliers including cities, irrigation districts, community
20 services districts, water districts, and an investor-owned regulated water utility company.
21 (Physical Solution, Section 18.1.1.)

22 Physical Solution Section 18.1.1. outlines voting protocols for the selection of the
23 Landowner Seats, but it does not define the procedures or a nomination process. As explained in
24 this Motion, Section 18.1.1. authorizes the *private* landowners listed in Exhibit 4 to hold and
25 vote on the Landowner Seats. The types of water uses among the *private* landowners on Exhibit
26 4 can be described to fall within four general categories: (i) domestic water use; (ii)
27 agricultural/irrigation use; (iii) commercial/industrial use; and (iv) recreational use. To be clear,
28 the Moving Parties are not asking the Court to determine which categories or landowner

1 representatives should fill the Landowner Seats, either initially or subsequently. Rather, the
2 Moving Parties seek an order interpreting the Judgment to confirm that a distinction exists, and
3 that the nomination process should therefore yield candidates representing two of the four
4 general categories of distinct landowner interests based on the types of water uses among those
5 Exhibit 4 *private* landowners who are eligible both to vote on and hold the Landowner Seats.

6 **CONCLUSION**

7 The Moving Parties request an Order of the Court *interpreting* the Judgment to clarify
8 and confirm that: (1) the Judgment requires that the *organizational* rules of the Watermaster
9 must be fully established, including procedures for the selection of the Landowner Seats, before
10 the Watermaster appoints the Engineer to prepare *operational* rules; (2) the Judgment precludes
11 public agencies, including public agencies listed in Exhibit 4 to the Physical Solution, from
12 holding either of the two Landowner Seats and from voting in the selection of those seats,
13 including in the event that a Public Water Supplier or other public agency acquires the Overlying
14 Production Rights of a party listed in Exhibit 4; and (3) the Judgment requires that the two
15 Landowner Seats provide broad-based representation of the private landowners on Exhibit 4, by
16 way of representation of the those landowners' diverse and distinct interests, described by
17 categories of those private landowners' water use, namely: (i) domestic water use; (ii)
18 agricultural/irrigation use; (iii) commercial/industrial use; and (iv) recreational use.

19 The Moving Parties are not seeking an order that would alter, amend or otherwise disrupt
20 the Judgment, and the power to hear and make a ruling on this Motion is well within the broad
21 parameters of this Court's continuing jurisdiction.

22 DATED: April 13, 2016.

Respectfully submitted,

23 GRESHAM SAVAGE NOLAN & TILDEN, PC

24
25 By:

MICHAEL DUANE DAVIS, ESQ.

DEREK R. HOFFMAN, ESQ.

Attorneys for A. V. UNITED MUTUALS GROUP, ADAMS
BENNETT INVESTMENTS, LLC and SERVICE ROCK PRODUCTS,
LP

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated
Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 550 East Hospitality Lane, Suite 300, San Bernardino, CA 92408-4205.

On April 13, 2016, I served the foregoing document(s) described **MOTION FOR ORDER INTERPRETING JUDGMENT REGARDING WATERMASTER FORMATION** on the interested parties in this action in the following manner:

(X) **BY ELECTRONIC SERVICE** – I posted the document(s) listed above to the Santa Clara County Superior Court website, <http://www.scefiling.org>, in the action of the Antelope Valley Groundwater Cases,

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

Executed on April 13, 2016 at San Bernardino, California.

Dina Sieder

DINA M. SNIDER