

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO: 109498 NAME: June S. Ailin (SBN 109498) / Nicolas D. Papajohn (SBN 305364) FIRM NAME: Aleshire & Wynder, LLP STREET ADDRESS: 18881 Von Karman Ave., Ste. 1700 CITY: Irvine STATE: CA ZIP CODE: 92612 TELEPHONE NO: (949) 223-1170 FAX NO: (949) 223-1180 E-MAIL ADDRESS: jailin@awattorneys.com / npapajohn@awattorneys.com ATTORNEY FOR (name): Dft/X-Compl/App, Phelan Piñon Hills Community Services Dist.	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012-3014 BRANCH NAME: Central District, Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: Coordination Proceeding Special Title (Rule 1550(b)) DEFENDANT/RESPONDENT: ANTELOPE VALLEY GROUNDWATER CASES	
APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)	
SUPERIOR COURT CASE NUMBER: JCCP 4408 (1-05-CV-049053)	
COURT OF APPEAL CASE NUMBER (if known): F075451	
RE: Appeal filed on (date): May 17, 2018	
Notice: Please read form APP-001 before completing this form. This form must be filed in the superior court, not in the Court of Appeal.	

1. RECORD OF THE DOCUMENTS FILED IN THE SUPERIOR COURT

I elect to use the following method of providing the Court of Appeal with a record of the documents filed in the superior court (check a, b, c, or d, and fill in any required information):

- a. ☐ A clerk's transcript under rule 8.122. (You must check (1) or (2) and fill out the clerk's transcript section on page 2 of this form.)
- (1) ☐ I will pay the superior court clerk for this transcript myself when I receive the clerk's estimate of the costs of this transcript. I understand that if I do not pay for this transcript, it will not be prepared and provided to the Court of Appeal.
- (2) ☐ I request that the clerk's transcript be provided to me at no cost because I cannot afford to pay this cost. I have submitted the following document with this notice designating the record (check (a) or (b)):
- (a) ☐ An order granting a waiver of court fees and costs under rule 3.50 et seq.; or
- (b) ☐ An application for a waiver of court fees and costs under rule 3.50 et seq. (Use Request to Waive Court Fees (form FW-001) to prepare and file this application.)
- b. ☒ An appendix under rule 8.124.
- c. ☐ The original superior court file under rule 8.128. (NOTE: Local rules in the Court of Appeal, First, Third, and Fourth Appellate Districts, permit parties to stipulate to use the original superior court file instead of a clerk's transcript; you may select this option if your appeal is in one of these districts and all the parties have stipulated to use the original superior court file instead of a clerk's transcript in this case. Attach a copy of this stipulation.)
- d. ☐ An agreed statement under rule 8.134. (You must complete item 2b(2) below and attach to your agreed statement copies of all the documents that are required to be included in the clerk's transcript. These documents are listed in rule 8.134(a).)

2. RECORD OF ORAL PROCEEDINGS IN THE SUPERIOR COURT

I elect to proceed (you must check a. or b. below):

- a. ☐ WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings.

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2. b. ☒ WITH the following record of the oral proceedings in the superior court (*you must check (1), (2), or (3) below*):
- (1) ☒ A reporter's transcript under rule 8.130. (*You must fill out the reporter's transcript section on page 3 of this form.*) I have (*check all that apply*):
- (a) ☐ Deposited the approximate cost of transcribing the designated proceedings with this notice as provided in rule 8.130(b)(1).
- (b) ☐ Attached a copy of a Transcript Reimbursement Fund application filed under rule 8.130(c)(1).
- (c) ☐ Attached the reporter's written waiver of a deposit for (*check either (i) or (ii)*):
- (i) ☐ all of the designated proceedings.
- (ii) ☐ part of the designated proceedings.
- (d) ☒ Attached a certified transcript under rule 8.130(b)(3)(C).
- (2) ☐ An agreed statement. (*Check and complete either (a) or (b) below.*)
- (a) ☐ I have attached an agreed statement to this notice.
- (b) ☐ All the parties have agreed in writing (stipulated) to try to agree on a statement. (*You must attach a copy of this stipulation to this notice.*) I understand that, within 40 days after I file the notice of appeal, I must file either the agreed statement or a notice indicating the parties were unable to agree on a statement and a new notice designating the record on appeal.
- (3) ☐ A settled statement under rule 8.137. (*You must check (a), (b), or (c) below.*)
- (a) ☐ The oral proceedings in the superior court were not reported by a court reporter.
- (b) ☐ The oral proceedings in the superior court were reported by a court reporter, but the appellant has an order waiving his or her court fees and is unable to pay for a reporter's transcript.
- (c) ☐ I am requesting to use a settled statement for reasons other than those listed in (a) or (b). (*You must attach the motion required under rule 8.137(a) to this form.*)

3. RECORD OF AN ADMINISTRATIVE PROCEEDING TO BE TRANSMITTED TO THE REVIEWING COURT

- ☐ I request that the clerk transmit to the reviewing court under rule 8.123 the record of the following administrative proceeding that was admitted into evidence, refused, or lodged in the superior court (*give the title and date or dates of the administrative proceeding*):

Title of Administrative Proceeding

Date or Dates

4. NOTICE DESIGNATING CLERK'S TRANSCRIPT

(*You must complete this section if you checked item 1a above indicating that you elect to use a clerk's transcript as the record of the documents filed in the superior court.*)

- a. **Required documents.** The clerk will automatically include the following items in the clerk's transcript, but you must provide the date each document was filed, or if that is not available, the date the document was signed.

Document Title and Description

Date of Filing

- (1) Notice of appeal
- (2) Notice designating record on appeal (*this document*)
- (3) Judgment or order appealed from
- (4) Notice of entry of judgment (*if any*)
- (5) Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
- (6) Ruling on one or more of the items listed in (5)
- (7) Register of actions or docket (*if any*)

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4 NOTICE DESIGNATING CLERK'S TRANSCRIPT

- b. **Additional documents.** (If you want any documents from the superior court proceeding in addition to the items listed in 4a. above to be included in the clerk's transcript, you must identify those documents here.)

- ☐ I request that the clerk include the following documents from the superior court proceeding in the transcript. (You must identify each document you want included by its title and provide the date it was filed or, if that is not available, the date the document was signed.)

	Document Title and Description	Date of Filing
(8)		
(9)		
(10)		
(11)		
(12)		

- ☐ Additional documents are listed on Attachment 4b beginning with number (13).

c. Exhibits to be included in clerk's transcript

- ☐ I request that the clerk include in the transcript the following exhibits that were admitted in evidence, refused, or lodged in the superior court (for each exhibit, give the exhibit number, such as Plaintiff's #1 or Defendant's A, and a brief description of the exhibit. Indicate whether or not the court admitted the exhibit into evidence):

	Exhibit Number	Description	Admitted (Yes/No)
(1)			
(2)			
(3)			
(4)			
(5)			

- ☐ Additional exhibits are listed on Attachment 4c beginning with number (6).

5. NOTICE DESIGNATING REPORTER'S TRANSCRIPT

You must complete both a and b in this section if you checked item 2b(1) above indicating that you elect to use a reporter's transcript as the record of the oral proceedings in the superior court. Please remember that you must pay for the cost of preparing the reporter's transcript.

- a. I request that the reporters provide (check one):

- (1) ☐ My copy of the reporter's transcript in electronic format.
- (2) ☐ My copy of the reporter's transcript in paper format.
- (3) ☐ My copy of the reporter's transcript in electronic format and a second copy in paper format.

(Code Civ. Proc., § 271; Cal. Rules of Court, rule 8.130(f)(4).)

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5. b. **Proceedings**

I request that the following proceedings in the superior court be included in the reporter's transcript. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions—and the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 5b beginning with number (5).

6. **NOTICE DESIGNATING PROCEEDINGS TO BE INCLUDED IN SETTLED STATEMENT**

(You must complete this section if you checked item 2b(3) above indicating you elect to use a settled statement.) I request that the following proceedings in the superior court be included in the settled statement. (You must identify each proceeding you want included by its date, the department in which it took place, a description of the proceedings—for example, the examination of jurors, motions before trial, the taking of testimony, or the giving of jury instructions— and, if applicable, the name of the court reporter who recorded the proceedings [if known], and whether a certified transcript of the designated proceeding was previously prepared.)

Date	Department	Full/Partial Day	Description	Reporter's Name	Prev. prepared?
(1)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(2)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(3)					<input type="checkbox"/> Yes <input type="checkbox"/> No
(4)					<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Additional proceedings are listed on Attachment 6 beginning with number (5).

7. a. The proceedings designated in 5b or 6 ☒ include ☐ do not include all of the testimony in the superior court.

b. If the designated proceedings DO NOT include all of the testimony, state the points that you intend to raise on appeal (rule 8.130(a)(2) provides that your appeal will be limited to these points unless, on motion, the reviewing court permits otherwise).

Points are set forth: ☐ Below ☐ On Attachment 7.

Date: May 26, 2018

June S. Ailin, Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 31

HON. JACK KOMAR, JUDGE

ANTELOPE VALLEY GROUNDWATER CASES.

)
)
) CASE NO. JCCP4408
)
)
)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, APRIL 18, 2018

APPEARANCES:

FOR PLAINTIFF:

JUNE S. AILIN, ESQ.
ALESHIRE & WYNDER, LLP
2361 ROSECRANS AVENUE, SUITE 475
EL SEGUNDO, CALIFORNIA 90245-4916
(310) 527-6660

FOR DEFENDANT L.A. CO. WATERWORKS DISTRICT 40:

JEFFREY V. DUNN, ESQ.
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVE, SUITE 1000
IRVINE, CALIFORNIA 92614
(949) 263-2600

FOR DEFENDANT ANTELOPE VALLEY WATERMASTER:

CRAIG A. PARTON, ESQ.
PRICE POSTEL & PARMA LLP
200 EAST CARRILLO STREET, SUITE 400
SANTA BARBARA, CALIFORNIA 93101
(805) 962-0011

(APPEARANCES CONTINUED TO THE NEXT PAGE.)

REPORTED BY:

JORGE P. DOMINGUEZ, CSR NO. 12523
OFFICIAL PRO TEMPORE COURT REPORTER

1 APPEARANCES: (CONTINUED)

2 FOR DEFENDANTS QUARTZ HILL WATER DISTRICT, LITTLE ROCK
3 CREEK IRRIGATION DISTRICT, AND PALM RANCH:

4 MANUEL D. SERPA, ESQ.
5 OLIVAREZ MADRUGA
6 1100 SOUTH FLOWER STREET, SUITE 2200
7 LOS ANGELES, CALIFORNIA 90015
8 (213) 744-0099

9 FOR DEFENDANTS PALMDALE WATER DISTRICT:

10 THOMAS S. BUNN III, ESQ.
11 LAGERLOF SENEAL GOSNEY & KRUSE, LLP
12 301 NORTH LAKE AVENUE, 10TH FLOOR
13 PASADENA, CALIFORNIA 91101
14 (626) 793-9400

15 FOR GARY VAN DAM:

16 SCOTT K. KUNEY, ESQ.
17 LAW OFFICES OF YOUNG WOOLDRIDGE
18 1800 30TH STREET, 4TH FLOOR
19 BAKERSFIELD, CALIFORNIA 93301
20 (661) 327-9661
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I N D E X

VOLUME 1

APRIL 18, 2018

CHRONOLOGICAL/ALPHABETICAL INDEX OF WITNESSES

(NONE)

EXHIBITS

(NONE)

1 CASE NUMBER: JCCP4408
2 CASE NAME: ANTELOPE VALLEY
3 GROUNDWATER CASES
4 LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 18, 2018
5 DEPARTMENT 31 HON. JACK KOMAR, JUDGE
6 APPEARANCES: (AS HERETOFORE NOTED.)
7 REPORTER: JORGE P. DOMINGUEZ,
8 CSR NO. 12523
9 TIME: A.M. SESSION

10 (THE FOLLOWING PROCEEDINGS WERE

11 HELD IN OPEN COURT:)

12 THE COURT: ALL RIGHT. GOOD MORNING. THIS IS IN
13 THE ANTELOPE VALLEY GROUNDWATER CASES. WE HAVE TWO
14 MATTERS, I BELIEVE, ON FOR HEARING THIS MORNING. LET ME
15 TAKE THE MOST DIFFICULT ONE FIRST. IT'S A MOTION TO BE
16 RELIEVED AS COUNSEL. MR. KUNEY.

17 MR. KUNEY: GOOD MORNING, YOUR HONOR. SCOTT
18 KUNEY, LAW OFFICES OF YOUNG WOOLDRIDGE, APPEARING ON
19 BEHALF OF -- FOR A MOTION FOR RELIEF WITH REGARD TO GARY
20 VAN DAM, AN INDIVIDUAL.

21 THE COURT: IS THERE ANY APPEARANCE IN
22 OPPOSITION?

23 MR. KUNEY: I'M NOT AWARE OF ANY, YOUR HONOR.

24 THE COURT: ALL RIGHT. THE MOTION IS GRANTED.

25 MR. KUNEY: THANK YOU, YOUR HONOR. IF I MAY, I
26 CAN THEN -- I WILL SERVE AND FILE THAT ORDER THAT YOU'VE
27 SIGNED HERE TODAY ON MR. VAN DAM AND THAT WILL THEN
28 EFFECTUATE THE DATE OF RELIEF.

1 THE COURT: ALL RIGHT. MY ONLY CONCERN ABOUT THE
2 FORM OF THE ORDER IS THAT THIS MATTER IS PENDING ON
3 APPEAL AND THERE'S NOTHING IN THE ORDER THAT MAKES ANY
4 REFERENCE TO THAT. I DON'T KNOW IF IT REQUIRES A -- I
5 DON'T KNOW IF YOU'VE APPEARED ON THE APPEAL OR NOT, BUT
6 IT MIGHT REQUIRE SOME OTHER FORM OF ORDER.

7 MR. KUNEY: YOUR HONOR, I APPRECIATE YOU BRINGING
8 THAT UP. WE HAVE NOT BEEN ASKED TO APPEAR ON THE
9 APPEAL. WE HAVE NOT DONE THAT. WHAT WE INTEND TO BE
10 DOING, THEN, IS FILING SEPARATE PLEADINGS WITH THE COURT
11 OF APPEAL 5TH DISTRICT ADVISING THEM OF BOTH THE
12 ORIGINAL SUBSTITUTIONS WITH REGARD TO THE OTHER VAN DAM
13 PARTIES AND THEN YOUR HONOR'S ORDER AS WELL TO LET THEM
14 KNOW OF SITUATION AS WELL.

15 THE COURT: ALL RIGHT. WELL, THANK YOU VERY
16 MUCH, MR. KUNEY. I'VE SIGNED THE ORDER.

17 ALL RIGHT. NOW WE HAVE THE MOTION BY PHELAN.
18 LET'S HAVE COUNSEL'S APPEARANCES FOR THAT, PLEASE. I
19 NOTE THERE ARE A NUMBER OF COUNSEL WHO APPARENTLY HAVE
20 CALLED IN ON COURTCALL, AND I'M GOING TO REMIND YOU IF
21 YOU'RE ON COURTCALL AND YOU WISH TO BE HEARD WITH REGARD
22 TO THIS MOTION, MAKE CERTAIN THAT YOU DESCRIBE AND
23 DEFINE WHO YOU ARE EACH TIME.

24 ALL RIGHT. SO THE LET'S HAVE COUNSEL WHO ARE
25 IN THE COURTROOM APPEARING IDENTIFY THEMSELVES FOR THE
26 RECORD AND THE REPORTER.

27 MS. AILIN: GOOD MORNING, YOUR HONOR. JUNE AILIN
28 FOR PHELAN PINION HILLS COMMUNITY SERVICES DISTRICT.

1 MR. PARTON: GOOD MORNING, YOUR HONOR. CRAIG
2 PARTON OF PRICE, POSTEL & PARMA, ON BEHALF OF THE
3 ANTELOPE VALLEY WATERMASTER.

4 MR. DUNN: GOOD MORNING, YOUR HONOR. JEFFREY
5 DUNN FOR LOS ANGELES COUNTY WATERWORKS DISTRICT NUMBER
6 40.

7 MR. SERPA: GOOD MORNING, YOUR HONOR. MANUEL
8 SERPA WITH OLIVAREZ, MADRUGA, LEMIEUX, O'NEIL
9 REPRESENTING QUARTZ HILL WATER DISTRICT, LITTLE ROCK
10 CREEK IRRIGATION DISTRICT AND PALM RANCH.

11 THE COURT: ALL RIGHT. THANK YOU. THIS MOTION
12 HAS BEEN FILED BY MS. AILIN ON BEHALF OF HER CLIENT. I
13 HAVE OBVIOUSLY READ THE MOTION, THE SUPPORTING
14 DOCUMENTS. I'VE READ THE OPPOSITION BY THE WATERMASTER,
15 AND I'VE RECEIVED AND READ THE REPLY THAT YOU FILED,
16 MS. AILIN. I WOULD INVITE FURTHER ARGUMENT.

17 MR. PARTON: THANK YOU, YOUR HONOR. FIRST I WANT
18 TO CLEAR UP SOME APPARENT MISPERCEPTIONS ABOUT THE ISSUE
19 PHELAN IS RAISING. IF YOU LOOK AT SOME OF THE ARGUMENTS
20 MADE IN THE OPPOSITIONS, THEY SEEM TO BE RESPONDING TO
21 THINGS THAT PHELAN ISN'T SAYING. PHELAN IS NOT CLAIMING
22 THAT JUDGMENT GIVES IT A WATER RIGHT. PHELAN IS NOT
23 CLAIMING THE JUDGMENT GIVES IT A RAMP DOWN RIGHT, AND
24 PHELAN IS NOT CLAIMING THAT IT HAS SOME SORT OF PRE-RAMP
25 DOWN RIGHT.

26 ALL WE'RE SAYING IS LIKE EVERY OTHER PRODUCER,
27 EVERY OTHER PARTY WHO PRODUCES GROUNDWATER, PHELAN DOES
28 NOT HAVE TO PAY A REPLACEMENT WATER ASSESSMENT FOR

1 GROUNDWATER PRODUCED IN 2016 AND 2017. THAT'S IT.
2 THAT'S THE ONLY ISSUE. THERE'S NOTHING IN THE JUDGMENT
3 THAT SAYS ONLY STIPULATING PARTIES GET THE BENEFIT OF
4 THAT 2016 AND 2017 EXEMPTION FROM REPLACEMENT WATER
5 ASSESSMENTS. THERE'S NOTHING IN THE JUDGMENT THAT SAYS
6 ONLY PARTIES WITH A PRODUCTION RIGHT GET THE BENEFIT OF
7 THE 2016/2017 EXEMPTION. THERE'S NOTHING IN THE
8 JUDGMENT THAT SAYS ONLY PARTIES WHO HAVE NOT CAUSED
9 QUOTE, UNQUOTE, HARM TO THE BASIN, WHICH IS NOT A
10 DEFINED TERM, ARE ELIGIBLE FOR THIS TWO-YEAR EXEMPTION
11 FROM REPLACEMENT WATER RIGHTS.

12 ALL OF THE PRODUCERS HAVE HARMED BASIN
13 OVERTIME, AND THERE'S BEEN NO FINDING THAT PHELAN HAS
14 CAUSED A MATERIAL INJURY, WHICH IS A DEFINED TERM OF THE
15 JUDGMENT, TO THE BASIN. THERE'S NOTHING IN THE JUDGMENT
16 THAT CONDITIONS THE EXEMPTION FROM REPLACEMENT WATER
17 ASSESSMENT FOR THESE TWO YEARS ON A PARTY NOT HAVING
18 CONTRIBUTED TO THE OVERDRAFT. ALL OF THE PRODUCERS
19 CONTRIBUTED TO THE OVERDRAFT; AND UNDER THE JUDGMENT,
20 ALL THE PRODUCERS NEVERTHELESS RECEIVED THIS TWO-YEAR
21 EXEMPTION FROM REPLACEMENT WATER ASSESSMENTS.

22 SO WE NEED TO FOCUS ON WHAT THAT'S ABOUT. NOW,
23 ONE OF THE THINGS THAT THE WATERMASTER HAS BROUGHT UP IN
24 ITS OPPOSITION IS THAT SPECIFIC PROVISIONS CONTROL OVER
25 GENERAL PROVISIONS, BUT THERE'S NOTHING SPECIFIC IN THE
26 JUDGMENT LIMITING THE APPLICATION OF THE TWO-YEAR
27 EXEMPTION FROM REPLACEMENT WATER ASSESSMENTS TO ANY
28 SUBCATEGORY OF PRODUCERS OR TAKING AWAY THAT EXEMPTION

1 FROM SOME SUBCATEGORY OF PRODUCERS. EVEN IN THE CONTEXT
2 OF CITING STATUTES THAT TALK ABOUT THE SPECIFIC
3 CONTROLLING OVER THE GENERAL, THE WATERMASTER HAS
4 DISTORTED ONE OF THOSE STATUTES. CODE OF CIVIL
5 PROCEDURE SECTION 1859, INSTEAD OF QUOTING THAT, IT'S
6 PARAPHRASED IN THE WATERMASTER'S OPPOSITION. THE
7 PARAPHRASE SAYS THAT THE SPECIFIC CONTROLS OVER THE
8 GENERAL WHERE THE TWO ARE ARGUABLY INCONSISTENT, BUT
9 WHAT THE STATUTE ACTUALLY SAYS IS THAT WHEN A GENERAL,
10 IN PARTICULAR, PROVISION ARE INCONSISTENT, THE LADDER IS
11 PARAMOUNT TO THE FORMER. ARE, NOT ARGUABLY.

12 THE FIRST QUESTION IS WHETHER THERE IS SOME
13 INCONSISTENCY, AND IN LIGHT OF THE FACT THAT THIS
14 SPECIFIC ISSUE REALLY HASN'T BEEN ADDRESSED, THERE'S NO
15 INCONSISTENCY. THE FACT THAT THE WATERMASTER HAD TO
16 PARAPHRASE THAT CODE OF CIVIL PROCEDURE PROVISION BY
17 ITSELF SUGGESTS THAT THEY'RE RECOGNIZING THERE REALLY
18 ISN'T AN INCONSISTENCY.

19 WHERE THE INCONSISTENCY LIES IS IN THE
20 ARGUMENTS MADE BY THE WATERMASTER AND THE PUBLIC WATER
21 SUPPLIERS, BECAUSE THEY'RE SAYING THAT THE PROVISION
22 STATING NO PRODUCER PAYS A REPLACEMENT WATER ASSESSMENT
23 FOR 2016 TO 2017 IS A GENERAL PROVISION THAT FALLS TO
24 MORE SPECIFIC PROVISIONS. THEY'RE ALSO SAYING THAT THE
25 TWO-YEAR EXEMPTION IS DEPENDENT ON A PARTY PUMPING WATER
26 THAT IT HAS A PRODUCTION RIGHT FOR, AND THEY'RE SAYING
27 SPECIFIC PROVISIONS CONTROL OVER THE GENERAL.

28 WELL, IF THAT'S THE CASE, IF THERE'S A PARTY

1 OTHER THAN PHELAN THAT HAS PUMPED MORE THAN IT'S
2 PRE-RAMP DOWN RIGHT IN 2016 AND 2017, THAT PARTY DOESN'T
3 GET THE BENEFIT OF THE TWO-YEAR EXEMPTION FROM
4 REPLACEMENT WATER ASSESSMENTS EITHER, BECAUSE THAT PARTY
5 HAS NO RIGHT. THEY HAVE NO RIGHT TO PUMP MORE THAN
6 THEIR PRE-RAMP DOWN RIGHT.

7 SO WHY ARE WE ONLY TALKING ABOUT PHELAN NOT
8 HAVING A PRODUCTION RIGHT, AND THEREFORE, IT DOESN'T GET
9 THE BENEFIT OF THIS EXEMPTION FROM REPLACEMENT WATER
10 ASSESSMENTS?

11 WE'VE SAID WHAT WE'VE SAID ABOUT DEFINITIONS IN
12 OUR PAPERS, AND I'M NOT GOING TO REPEAT THAT, BUT YOU
13 HAVE TO LOOK AT THE INCONSISTENCY IN THEIR ARGUMENTS IN
14 SAYING IF YOU DON'T HAVE A PRODUCTION RIGHT, YOU DON'T
15 GET THE BENEFIT OF THE EXEMPTION. WELL, IF THAT'S THE
16 CASE, THEN ANY OTHER PARTY THAT'S PRODUCED MORE THAN
17 THEIR PRE-RAMP DOWN RIGHT SHOULD BE PAYING A REPLACEMENT
18 WATER ASSESSMENT FOR 2016 AND 2017 AS WELL.

19 THERE'S AN ARGUMENT IN THE PUBLIC WATER
20 SUPPLIER'S OPPOSITION TO THE EFFECT THAT IF PHELAN
21 DOESN'T HAVE TO PAY A REPLACEMENT WATER ASSESSMENT, THEN
22 THERE'S NOTHING TO PREVENT THE TENS OF THOUSANDS OF
23 PARTIES IN THIS ACTION WHO HAVE NEVER PUMPED GROUNDWATER
24 FROM THE BASIN FROM DRILLING A WELL AND PUMPING
25 GROUNDWATER FREE OF A REPLACEMENT WATER ASSESSMENT FOR
26 TWO YEARS. IT'S A SILLY ARGUMENT FOR A VARIETY OF
27 REASONS.

28 FIRST OF ALL, THE INJUNCTION PROVISION IN THE

1 JUDGMENT WOULD PREVENT THAT.

2 SECOND OF ALL, AS THE PUBLIC WATER SUPPLIERS
3 THEMSELVES POINT OUT IN THE NEXT PARAGRAPH OF THEIR
4 OPPOSITION, SECTION 18.5.13 OF THE JUDGMENT REQUIRES A
5 NEW APPLICATION TO BE SUBMITTED TO THE WATERMASTER. BUT
6 MOST IMPORTANTLY, THE REASON THAT ARGUMENT IS SILLY IS
7 THAT THIS EXCEPTION APPLIES ONLY FOR 2016 AND 2017.
8 WE'RE ALREADY IN 2018. WE HAVE NOT HAD TENS OF
9 THOUSANDS OF PEOPLE COME IN AND START PUMPING WATER WHO
10 WOULD BE ABLE TO CLAIM THAT EXEMPTION FOR THOSE TWO
11 YEARS. IT'S A SILLY ARGUMENT.

12 THE OTHER THING THAT'S VERY INTERESTING IS THAT
13 NO AMOUNT FOR THIS REPLACEMENT WATER ASSESSMENT THAT THE
14 WATERMASTER WANTS TO IMPOSE ON PHELAN HAS BEEN SET. AND
15 EVERY TIME THERE'S A REFERENCE TO THAT REPLACEMENT WATER
16 ASSESSMENT THAT PHELAN HAS TO PAY AFTER 2017, IT REFERS
17 TO SECTION 9.2 IN THE JUDGMENT. IF YOU LOOK AT THE
18 LANGUAGE OF THAT SECTION, THERE'S REALLY NO WAY IT CAN
19 BE APPLIED TO PHELAN. THAT PROVISION SAYS, IN PART, THE
20 WATERMASTER SHALL IMPOSE THE REPLACEMENT WATER
21 ASSESSMENT ON ANY PRODUCER WHOSE PRODUCTION OF
22 GROUNDWATER FROM THE BASIN IN ANY YEAR IS IN EXCESS OF
23 THE SUM OF SUCH PRODUCER'S PRODUCTION RIGHT AND IMPORTED
24 WATER RETURN FLOW AVAILABLE IN THAT YEAR.

25 WELL, THE WATERMASTER AND THE PUBLIC WATER
26 SUPPLIERS ARE ARGUING PHELAN ISN'T A PRODUCER. SO IF
27 PHELAN ISN'T A PRODUCER, HOW DO YOU APPLY SECTION 9.2 TO
28 COME UP WITH A REPLACEMENT WATER ASSESSMENT FOR PHELAN?

1 WE HAVE THE WATERMASTER AND THE PUBLIC WATER SUPPLIERS
2 ARGUING PRODUCTION OF GROUNDWATER IS PREMISED ON HAVING
3 A WATER RIGHT. WELL, IF THAT'S THE CASE, PHELAN DOESN'T
4 HAVE A WATER RIGHT. SO, ONCE AGAIN, THE EFFORT TO
5 IMPOSE A REPLACEMENT WATER ASSESSMENT FOR PHELAN UNDER
6 9.2 DIES RIGHT THERE. PHELAN DOESN'T HAVE A PRODUCTION
7 RIGHT, SO THE EFFORT TO IMPOSE A REPLACEMENT WATER
8 ASSESSMENT ON PHELAN, AGAIN, DIES RIGHT THERE. SO ON
9 THE ONE HAND --

10 THE COURT: HOW DO YOU SQUARE THAT WITH 6.4.1.2?

11 MS. AILIN: YOU SQUARE THAT WITH 6.4.1.2 BY
12 READING THE DEFINITIONS FOR WHAT THEY SAY. A PARTY IS
13 ANY -- EXCUSE ME, A PRODUCER IS ANY PARTY THAT PRODUCES
14 GROUNDWATER. A PARTY IS ANYONE SUBJECT TO THIS
15 JUDGMENT, BUT THIS INTERNAL CONSISTENCY BETWEEN THIS
16 EFFORT TO IMPOSE A REPLACEMENT WATER ASSESSMENT FOR
17 YEARS THAT THE JUDGMENT SAYS NO ONE PAYS A REPLACEMENT
18 WATER ASSESSMENT FOR AND THE PROVISIONS ABOUT HOW YOU
19 FIGURE OUT WHAT THE ASSESSMENT IS IMPLY IT --

20 THE COURT: BUT 6.4.1.2 SPECIFICALLY REFERS TO
21 9.2.

22 MR. PARTON: RIGHT, THAT'S A PROBLEM. IT'S A
23 PRODUCT --

24 THE COURT: HOW DO YOU RATIONALIZE THAT?

25 MS. AILIN: I CAN'T RATIONALIZE IT. WHAT I CAN
26 SAY IS THAT 6.4.1.2 WAS DROPPED INTO THE PROPOSED
27 PHYSICAL SOLUTION AS A WAY TO TRY TO MAKE PHELAN GO
28 AWAY, AND NOBODY REALLY THOUGHT ABOUT HOW THAT WAS GOING

1 TO WORK WHEN THAT WAS DROPPED IN THERE.

2 THE COURT: I DON'T THINK ANYBODY EVER THOUGHT
3 PHELAN WAS GOING TO GO AWAY, FROM WHAT I CAN GATHER, AND
4 YOU'RE PROOF OF THAT. WHEN I LOOK AT THE TOTALITY OF
5 THIS JUDGMENT AND THE PHYSICAL SOLUTION THAT'S ADOPTED
6 BY THE JUDGMENT, AND WHEN I LOOK AT THE EVIDENCE THAT
7 WAS PRESENTED IN SUPPORT OF THE PHYSICAL SOLUTION AND
8 THE JUDGMENT AT OUR HEARING, WHICH WAS IN, I GUESS,
9 DECEMBER, THE THING THAT REALLY STOOD OUT IN MY MIND WAS
10 THAT THE TESTIMONY UPON WHICH THE COURT FOUND THAT THE
11 PHYSICAL SOLUTION WOULD WORK DID NOT INCLUDE ANY
12 REFERENCES TO ANY WATER THAT WAS EXTRACTED BY PHELAN.

13 THE STATEMENT OF DECISION ON -- THE PARTIAL
14 STATEMENT OF DECISION THAT THE COURT WROTE AFTER THE
15 PHELAN PHASE OF THE TRIAL FOUND THAT, IN FACT, PHELAN
16 HAD NO RIGHTS TO WATER IN THE VALLEY. IF IT PUMPED
17 WATER OUT, IT CLEARLY WOULD HAVE TO PAY BECAUSE IT HAD
18 NO OTHER RIGHT.

19 THE STIPULATION, THEN, THAT WAS ENTERED INTO --
20 I SHOULD SAY THE PHYSICAL SOLUTION SPECIFICALLY PROVIDED
21 FOR PHELAN TO HAVE THE ABILITY TO PUMP OUT ITS MAXIMUM,
22 AS LONG AS IT PAID FOR IT. THAT MADE A LOT OF SENSE TO
23 ME, NOT AS A WAY OF HAVING PHELAN LEAVE, I NEVER
24 EXPECTED THAT, BUT IT CERTAINLY GAVE YOU THE OPPORTUNITY
25 TO FRAME YOUR CLAIM THAT THE COURT WAS WRONG IN FINDING
26 THAT THERE WAS NO APPROPRIATIVE RIGHT THAT PHELAN HAD.
27 THERE'S NO QUESTION IN MY MIND BASED ON THE EVIDENCE
28 THAT WAS PRESENTED AND WHAT THE COURT FOUND THAT THERE

1 WAS NO SURPLUS AVAILABLE FOR PHELAN TO ACQUIRE AN
2 APPROPRIATIVE RIGHT IN THE AQUIFER INASMUCH AS IT WAS
3 ALL INTERCONNECTED.

4 IT DOES SEEM TO ME IF YOU LOOK AT THE WHOLE OF
5 THE PHYSICAL SOLUTION AND THE EVIDENCE THAT WAS PROVIDED
6 AND OFFERED TO JUSTIFY THE COURT'S ULTIMATE DECISION
7 THAT IT WAS AN APPROPRIATE PHYSICAL SOLUTION, YOU CAN'T
8 IGNORE THE FACT THAT THERE IS NO PRODUCTIVE RIGHT; THAT
9 PHELAN, IF IT DIDN'T PAY, WOULD BE CAUSING HARM TO THE
10 BASIN. I DON'T DISAGREE WITH YOU THAT EVERYBODY THAT
11 KEPT PUMPING IN 2016 AND 2017, IF THEY DID NOT REDUCE
12 THEIR PUMPING LEVELS WOULD CAUSE INJURY TO THE AQUIFER
13 BECAUSE IT ENHANCED OR CONTINUED THE OVERDRAFT AND
14 THAT'S TRUE OF PHELAN AS WELL. BUT BECAUSE PHELAN NEVER
15 HAD A RIGHT TO PUMP AND THERE WAS NEVER A DETERMINATION
16 AS TO THAT RIGHT BEING AVAILABLE TO PHELAN, PHELAN HAD
17 TO PAY FOR WHATEVER IT PUMPED, SO THAT AT LEAST THERE
18 WAS NO FURTHER HARM CREATED BY PHELAN'S PUMPING.

19 MS. AILIN: WELL, WE'LL HAVE A LOT MORE TO SAY
20 ABOUT MUCH OF THIS ON THE APPEAL. FOR PURPOSE OF THIS
21 ARGUMENT, I'LL TAKE THE JUDGMENT AS IT IS, BUT THE
22 COURT'S STATEMENT OF DECISION WAS FOCUSED ON WHETHER OR
23 NOT PHELAN HAD A WATER RIGHT, WHICH IS NOT THE ISSUE
24 HERE, AND IT WAS FOCUSED ON WHETHER THIS PHYSICAL
25 SOLUTION WOULD BRING THE BASIN INTO BALANCE.

26 THERE IS NO EVIDENCE IN THE RECORD THAT'S GOING
27 TO SUPPORT A CONCLUSION THAT IF PHELAN DOESN'T PAY A
28 REPLACEMENT WATER ASSESSMENT FOR TWO YEARS, THAT THAT

1 WILL PREVENT THE BASIN FROM COMING INTO BALANCE AT THE
2 END OF THE RAMP DOWN PERIOD. THERE IS A REAL PROBLEM, I
3 THINK, WITH SAYING THAT IN SECTION 6.4.1.2, PRODUCER
4 MEANS WHAT IT SAYS, ANY PARTY -- EXCUSE ME. THAT IN THE
5 CONTEXT OF 6.4.1.2, PRODUCER DOES NOT MEAN WHAT IT SAYS,
6 THAT ANY PARTY WHO PRODUCES GROUNDWATER IS A PRODUCER,
7 BUT IN SECTION 9.2, IT DOES MEAN THAT ANY PARTY WHO
8 PRODUCES GROUNDWATER IS A PRODUCER.

9 THE COURT: LET ME DISAGREE WITH YOU AS TO THE
10 EVIDENCE THAT DETERMINES WHETHER OR NOT PHELAN'S
11 CONTINUED PUMPING WITHOUT PAYING WOULD CAUSE DETRIMENT
12 AND PREVENT THE PHYSICAL SOLUTION FROM BEING SUCCESSFUL.
13 THE EVIDENCE FROM THE EXPERT'S UPON WHICH THE COURT
14 RELIED DID NOT INCLUDE ANY ADDITIONAL PUMPING FROM
15 PHELAN BEYOND WHAT IT REPLACED, SO THAT, IN FACT, THERE
16 IS EVIDENCE -- IT'S SLIGHT, IT'S NOT A HUGE AMOUNT,
17 OBVIOUSLY, 1,200 ACRE FEET A YEAR, BUT THERE'S NO
18 QUESTION IN MY MIND THAT THE EXPERT OPINION DID NOT
19 INCLUDE ANY PUMPING WITHOUT COMPENSATION BY PHELAN IN
20 ORDER TO ACHIEVE THE PHYSICAL SOLUTION AS IT WAS. NOW,
21 OBVIOUSLY, WE'RE NOT GOING TO SPLIT HAIRS, BUT I BELIEVE
22 THAT TO BE CORRECT.

23 MS. AILIN: THAT STILL DOESN'T ADDRESS THE
24 DEFINITIONAL PROBLEM RAISED BY THE LANGUAGE OF THE
25 JUDGMENT THAT FOR SOME PROVISION, PHELAN'S A PRODUCER;
26 FOR SOME OTHER PROVISION, PHELAN IS NOT A PRODUCER.
27 THAT'S GOING TO BE A LONG-TERM PROBLEM IF THAT'S THE
28 ROAD WE'RE GOING DOWN.

1 THE COURT: IT COULD BE, BUT I THINK THAT YOU
2 HAVE TO EXAMINE THE ENTIRETY OF THE JUDGMENT AND WHAT
3 IT'S BASED UPON IN ORDER TO DETERMINE WHO IS ENTITLED TO
4 THE BENEFIT OF TWO YEARS RAMP DOWN FREE NO WATER
5 REPLACEMENT.

6 INCIDENTALLY, DOES ANYBODY HAVE A NOTION ABOUT
7 WHAT THE ACTUAL COST TO PHELAN IS FOR 1,200 ACRE FEET?

8 MS. AILIN: THERE'S BEEN NO AMOUNT SET FOR THOSE
9 YEARS.

10 THE COURT: WELL, I UNDERSTAND THAT, BUT IS THERE
11 A BALLPARK NUMBER?

12 MS. AILIN: NO ONE'S EXPRESSED ONE TO ME.

13 MR. PARTON: THE WATERMASTER ENGINEER HAS NOT
14 CALCULATED ED THAT.

15 THE COURT: WELL, WHAT'S THE COST OF AN ACRE FOOT
16 OF WATER TODAY?

17 MR. PARTON: YOU KNOW, YOUR HONOR, I DON'T WANT
18 TO GUESS. I'M THINKING THE COST TO PHELAN FOR THOSE TWO
19 YEARS IS SOMEWHERE IN THE RANGE OF \$400,000.

20 THE COURT: HOW MUCH?

21 MR. PARTON: \$400,000.

22 MR. DUNN: YOUR HONOR, JEFFREY DUNN FOR DISTRICT
23 40. REPLACEMENT WATER, COST WE'RE TALKING ABOUT WHAT
24 THE AVEK WOULD PROVIDE IN TERMS OF REPLACEMENT WATER FOR
25 ANYONE IN THE BASIN, SO THAT PRICE IS SORT OF DETERMINED
26 BY AVEK AS IT SETS PRICES FOR STATE PROJECT WATER FOR
27 PEOPLE WHO WISH TO PURCHASE IT. I DON'T HAVE THAT
28 DOLLAR FIGURE, BUT MY POINT IS THAT AVEK HAS A WELL

1 ESTABLISHED PROCESS, IT'S PUBLIC, FOR DOING THAT. IT'S
2 NOT INTENDED TO SINGLE OUT ANY PARTICULAR USER. THIS IS
3 HOW MUCH REPLACEMENT WATER, WHICH IS BY STATE PROJECT
4 WATER, COST.

5 THE COURT: IT'S NOT ARBITRARY?

6 MR. PARTON: NO.

7 MR. DUNN: CORRECT.

8 THE COURT: IS THAT RIGHT?

9 MR. DUNN: THAT'S CORRECT.

10 MR. PARTON: THAT'S CORRECT.

11 THE COURT: MS. AILIN, IF YOU HAVE FURTHER
12 ARGUMENT, I'LL BE HAPPY TO HEAR IT.

13 MS. AILIN: I DON'T HAVE FURTHER ARGUMENT AT THIS
14 TIME.

15 THE COURT: OKAY. THEN LET ME HEAR FROM THE
16 OPPOSITION.

17 MR. PARTON: YOUR HONOR, WE THINK THE COURT IS
18 EXACTLY STATING THE GIST OF WHAT THIS ISSUE IS ABOUT.
19 THERE'S BEEN A SPECIFIC FINDING BY THIS COURT AFTER A
20 TRIAL THAT PHELAN EXPORTS ALL THEIR PRODUCTION OUTSIDE
21 THE BASIN'S BOUNDARIES; THAT IT'S MINING ITS PRODUCTION;
22 THAT IT NEEDS TO PAY A REPLACEMENT WATER ASSESSMENT FOR
23 ALL THE WATER THAT IT TAKES OUT OF THE BASIN. IT'S A
24 ONE-FOR-ONE ARRANGEMENT. WE UNDERSTAND THAT.

25 WE CAME TO THIS LATE AS WATERMASTER GENERAL
26 COUNSEL LOOKING AT ALL THE ISSUES BACK IN JANUARY AND
27 ISSUED A MEMO TO THE BOARD ON THE TOPIC OF PHELAN'S
28 REQUEST. THE BOARD THEN VOTED UNANIMOUSLY AND A

1 RESOLUTION TO HAVE US MOVE FORWARD WITH IMPOSING THE
2 REPLACEMENT WATER ASSESSMENT FOR 2016 AND 2017. NOW
3 WE'RE FINDING OUT THAT PHELAN THINKS THAT THEY HAVE
4 RIGHTS UNDER 8.3 OF THE JUDGMENT. WE THINK THAT'S
5 INCORRECT. THEY'VE ALREADY ADMITTED THEY HAVE NO
6 PRODUCTION RIGHT, THEY HAVE NO PRE-RAMP DOWN PRODUCTION
7 RIGHT.

8 UNDER THEIR LOGIC, THEY'RE SPLITTING UP 8.3
9 SAYING PART APPLIES TO THEM AND PART DOESN'T, BUT THE
10 LOGIC WOULD SEEM TO ME TO BE TIGHT THAT IF PHELAN WAS
11 CORRECT WITH RESPECT TO SECTION 8.3, THEY'D ALSO HAVE
12 PRE-RAMP DOWN PRODUCTION RIGHTS. THEY CAN RAMP DOWN
13 OVER SEVEN YEARS. THEY, OBVIOUSLY, ARE NOT SEEKING THAT
14 IN THIS MOTION, BUT WE THINK THERE'S A LOGICAL
15 INCONSISTENCY AS TO HOW THEY'RE APPLYING 8.3.

16 THE FACT IS THAT THE JUDGMENT WAS CLEAR THEY
17 HAD NO PRODUCTION RIGHT. THE JUDGMENT IS CLEAR THEY
18 HAVE NO PRE-RAMP DOWN PRODUCTION RIGHT. FOR NOW PHELAN
19 TO BACK UP AND AVOID THE IMPACT OF THIS COURT'S SPECIFIC
20 FINDING WITH RESPECT TO PHELAN'S ACTIVITIES IN THE BASIN
21 AND THE NEED TO REPLACE THAT WATER FOR AN ACRE FOOT IN,
22 ACRE FOOT OUT, WE THINK IS INAPPROPRIATE.

23 I'M GLAD THE COURT MENTIONED WITH RESPECT TO
24 WHAT THE FINDINGS WERE AT TRIAL WITH RESPECT TO THE
25 EXPERT TESTIMONY ON THE PHYSICAL SOLUTION. WE THINK
26 THAT'S ULTIMATELY CRITICAL AS WHAT THIS COURT WAS DOING
27 BACK IN DECEMBER TO TAKE EVIDENCE ON THIS VERY FACT,
28 THAT PHELAN'S PRODUCTION HAD TO HAVE REPLACEMENT WATER

1 IN ORDER TO KEEP THE BASIN IN A SUSTAINABLE CONDITION,
2 PARTICULARLY IN THE RAMP DOWN POSITION.

3 TO US THE COURT MADE THESE DETERMINATIONS IN
4 THE STATEMENT OF DECISION. THEY'RE CLEAR. ACTUALLY
5 FINDING THAT PHELAN'S PRODUCTION TAKES AWAY RECHARGE
6 FROM THE BASIN, IS ACTUALLY MINING WATER OUT OF THE
7 BASIN AND HAD TO PAY A REPLACEMENT WATER ASSESSMENT, AND
8 THE SPECIFIC PROVISION 6.4.1.2, WE THINK, IS PERFECTLY
9 CLEAR ABOUT WHAT THE BARGAIN WAS THAT PHELAN GOT OUT OF
10 THIS TRIAL.

11 PHELAN GETS TO CONDUCT THAT ACTIVITY, BUT
12 THERE'S A VERY SIMPLE EXCHANGE. THEY PAY FOR
13 REPLACEMENT WATER SO THAT THERE'S NO ULTIMATE HARM TO
14 THE BASIN. WE THINK THE COURT WAS VERY CLEAR IN TERMS
15 OF THE JUDGMENT AND ITS ORDER THIS PAST JANUARY 31ST OF
16 THE HEARING THAT WE HAD. IT SEEMS TO BE VERY CLEAR WHAT
17 THE COURT'S INTENTION WAS AND THAT'S WHY WE'RE HERE.

18 THE COURT: ONE OF THE THINGS THAT MOTIVATED THE
19 COURT TO APPROVE THE PROVISION THAT PERMITTED THE 1,200
20 ACRE FEET A YEAR -- UP TO 1,200 ACRE FEET A YEAR FOR
21 PAYMENT WAS THE RECOGNITION THAT PHELAN IS A PUBLIC
22 SERVICE. IT IS A PUBLIC ENTITY. AND TO IMMEDIATELY
23 DIRECT THAT THERE BE NO PUMPING OF THAT WATER TO BE SENT
24 OUT OF THE ADJUDICATION AREA WOULD HAVE VERY HARSH
25 PENALTY ON THE PUBLIC, SO THAT IT OCCURRED TO THE COURT
26 AT THE TIME EVEN THOUGH PHELAN WAS NOT A PARTY TO THE
27 STIPULATION, AND I DON'T KNOW WHAT NEGOTIATIONS THERE
28 WERE BETWEEN THE PARTIES THAT LED UP TO THAT SPECIFIC

1 PROVISION IN 6.4.1.2, BUT IT WAS VERY CLEAR TO THE COURT
2 THAT THAT WAS TO BE A VERY EXPRESSED CONDITION UPON THE
3 PUMPING OF WATER OUT OF THE AQUIFER ADJUDICATION AREA
4 AND THAT WAS THE REASON WHY THE COURT COULD JUSTIFY
5 APPROVING THAT SPECIFIC PROVISION AND FELT IT WOULD BE
6 VERY UNFAIR TO -- INEQUITY TO SUDDENLY CUT OFF THAT
7 SERVICE AREA FROM THE USE OF THAT WATER.

8 AGAIN, NOBODY PRESENTED ANY EVIDENCE AS TO WHAT
9 THE NEGOTIATIONS WERE HERE. I'VE HAD NO EXTRINSIC
10 EVIDENCE, NO PAROL EVIDENCE TO EXPLAIN HOW THAT CAME
11 ABOUT, BUT IT MADE SENSE TO THE COURT AS A REASONABLE
12 RESOLUTION.

13 THERE'S ALSO SOME LANGUAGE IN THE JUDGMENT
14 THAT -- AND I THINK IT'S ALSO IN THE PHYSICAL SOLUTION
15 THAT PROVIDES THAT IF A PARTY IS NOT, IN EFFECT,
16 SUPPORTING OR STIPULATING BUT, IN FACT, IS OBJECTING TO
17 THE JUDGMENT, THAT THE WATERMASTER MAY STILL PERMIT AN
18 ALLOCATION OF WATER TO THAT PERSON, BUT UNLESS THEY'RE A
19 STIPULATING PARTY, THEY DO NOT RECEIVE THE BENEFIT OF
20 THE PROVISIONS OF THE PHYSICAL SOLUTION WHICH BENEFITS
21 THOSE PARTIES WHO STIPULATED OR WHO SUPPORT IT.

22 SINCE PHELAN IS NEITHER OF THOSE, IT SEEMS TO
23 ME THAT NONE OF THE OTHER BENEFITS, WHICH WOULD INCLUDE
24 THE ASSESSMENT FREE RAMP DOWN PUMPING FOR THOSE TWO
25 YEARS SHOULD NOT BE AVAILABLE TO A NON-STIPULATING OR
26 NON-SUPPORTING PARTY.

27 ANYBODY LIKE TO ADDRESS THAT TO THE COURT?

28 MR. DUNN: I HAVE OTHER ARGUMENT TO ADDRESS.

1 THE COURT: I'M SURE YOU DO, MR. DUNN, BUT I'D
2 LIKE TO HAVE AN ANSWER TO THAT.

3 MR. DUNN: WELL, I THINK THE ANSWER TO THAT
4 QUESTION REALLY IS RESOLVED BY THE COURT-APPROVED
5 PHYSICAL SOLUTION, THE JUDGMENT.

6 THE PROBLEM FOR PHELAN IN THE ARGUMENTS THAT IT
7 PRESENTS TO THE COURT IS THAT EVEN IF THE COURT WERE TO
8 ACCEPT AS TRUE THE INTERPRETATION THAT PHELAN STRAINS TO
9 PROVIDE IN THE JUDGMENT -- IN OTHER WORDS, TO TREAT
10 ITSELF AS A PRODUCER OF SOMEONE WITH A RIGHT TO A RAMP
11 DOWN, THE PROBLEM FOR PHELAN IS THAT IT'S NOT LIKE ANY
12 OTHER PUBLIC WATER SUPPLIER PRODUCER OR FOR THAT MATTER,
13 REALLY ANY OTHER PARTY IN THE JUDGMENT. THE
14 DISTINGUISHING FACTOR IS FOUND, AS REFLECTED IN THE
15 STATEMENT OF DECISION, AND THAT IS, PHELAN EXPORTS ITS
16 GROUNDWATER FROM THE ADJUDICATION AREA.

17 THE PROBLEM FOR PHELAN IS THAT -- I THINK THIS
18 MATTER IS PERHAPS RESOLVED JUST BY LOOKING AT THE
19 JUDGMENT, 6.4, IN THE OPENING SENTENCE. WE TEND TO GO
20 QUICKLY DOWN TO 6.4.1.2, THE SUBSECTION THERE, BUT 6.4,
21 WITH THE LABEL INJUNCTION AGAINST TRANSPORTATION FROM
22 BASIN, THAT'S THE LABEL, IT BEGINS EXCEPT UPON FURTHER
23 ORDER OF THE COURT -- HERE'S THE LANGUAGE, EACH AND
24 EVERY PARTY, PARTY BEING THE DEFINED TERM. SO WHEREAS
25 PHELAN HERE EMPHASIZES IT WANTS TO BE CONSIDERED AS A
26 PARTY UNDER THE JUDGMENT, IT WANTS TO HAVE ALL THE
27 PROVISIONS THAT APPLY TO PARTIES IN THE JUDGMENT, AS
28 DEFINED HERE, APPLY TO IT. FAIR ENOUGH. 6.4 SAYS THAT

1 FOR EACH AND EVERY PARTY, AND THAT INCLUDES PHELAN, AND
2 I'M GOING TO SKIP OVER, IS ENJOINED AND RESTRAINED, AND
3 WE HAVE THOSE TERMS IN CAPITAL LETTERS, FROM
4 TRANSPORTING GROUNDWATER HEREAFTER PRODUCED AND AGAIN,
5 PHELAN WANTS THE BENEFIT OF THE TERM PRODUCER AND
6 PRODUCE, FAIR ENOUGH. FROM TRANSPORTING GROUNDWATER
7 HEREAFTER PRODUCED FROM THE BASIN TO AREAS OUTSIDE OF
8 THE BASIN EXCEPT AS PROVIDED FOR THE FOLLOWING.

9 THE FIRST POINT, I THINK, HAS TO BE MADE THAT
10 MY CLIENT OR ANY OTHER PARTY THAT'S A SIGNATORY TO THE
11 STIPULATION OR A PARTY TO THE JUDGMENT THAT CLAIMS A
12 RAMP DOWN AND PRODUCTION RIGHT BY VIRTUE OF THE
13 JUDGMENT, EVEN WHERE THERE'S NO DISPUTE ABOUT THAT RAMP
14 DOWN AND THAT PRODUCTION RIGHT, THAT PARTY IS STILL
15 NONETHELESS SUBJECT TO THIS PROVISION 6.4, WHICH
16 PROHIBITS EXPORT. IN OTHER WORDS, WHETHER YOU CLAIM A
17 RAMP DOWN RIGHT OR NOT, YOU STILL CANNOT EXPORT THE
18 WATER OUTSIDE THE BASIN. THAT'S THE RULE.

19 SO WHAT PHELAN, THEN, FACES IS THERE'S A
20 GENERAL PROHIBITION AGAINST EXPORTING, REGARDLESS OF
21 WHETHER YOU CAN RAMP DOWN OR NOT, REGARDLESS OF WHETHER
22 YOU CAN -- WHATEVER. WHAT WE DID, AS REFLECTED IN THE
23 JUDGMENT, IS THERE ARE LIMITED EXCEPTION TO THAT RULE
24 AND THEY'RE VERY SPECIFIC. IN PHELAN IS SPECIFICALLY
25 REFERENCED IN ITS OWN EXCEPTION TO THAT RULE, WHICH THE
26 COURT HAS NOTED AND THAT'S THE 6.4.1.2.

27 AS THE COURT HAS ALREADY RECOGNIZED, AS A
28 PUBLIC WATER SUPPLIER, WE DEEMED IT APPROPRIATE TO

1 PROVIDE THIS LIMITED EXCEPTION FOR PHELAN. IRONICALLY,
2 BECAUSE IT'S BETTER THAN A RAMP DOWN. PHELAN ORDINARILY
3 WOULD BE PROHIBITED FROM EXPORTING THE WATER AS IT DOES
4 FROM THE BASIN. THE JUDGMENT CREATES AN EXCEPTION FOR
5 THEM. IT GIVES THEM THEIR FULL AMOUNT OF PRODUCTION,
6 THE 1,200 ACRE FEET PER YEAR AS LONG AS IT DOESN'T CAUSE
7 MATERIAL INJURY AND AS LONG AS THEY PAY REPLACEMENT
8 ASSESSMENT.

9 THE REASON WHY THAT'S BETTER THAN A RAMP DOWN
10 IS BY DEFINITION A RAMP DOWN WOULD TAKE -- IF PHELAN HAD
11 A RAMP DOWN, WHICH THEY DON'T BECAUSE THEY EXPORT. THEY
12 WOULD ULTIMATELY HAVE TO RAMP DOWN TO ZERO, LEAVING THEM
13 AT THE END OF THE RAMP DOWN PERIOD WITH NO RIGHT, ZERO
14 WATER TO PRODUCE FROM THE BASIN AND TO EXPORT. THEY
15 WOULD BE COMPLETELY BARRED AND PROHIBITED UNDER THIS
16 GENERAL EXPORT PROVISION. IRONICALLY, THIS PROVISION IS
17 GENEROUS TO PHELAN BECAUSE IT ALLOWS THEM WITHOUT HAVING
18 TO RAMP DOWN EVEN AFTER TWO YEARS OR ONE, THREE YEARS,
19 WHENEVER, THEY COULD IMMEDIATELY CONTINUE TO PUMP
20 WITHOUT ANY REDUCTION IN PUMPING, EXPORT THAT WATER, AS
21 LONG AS THEY PAID THE REPLACEMENT ASSESSMENT.

22 WE CONTINUE TO PRESENT TO THE COURT THAT THIS
23 PROVISION WAS MORE BENEFICIAL, IT WAS EQUITABLE, AND IT
24 BENEFITS PHELAN EVEN BETTER THAN THE RAMP DOWN
25 REPLACEMENT EXEMPTION THEY'RE TRYING TO ARGUE IN COURT
26 TODAY. BUT GOING BACK TO ALL OF THIS, THERE'S NO
27 INCONSISTENCY HERE, WHETHER IT'S MY CLIENT, DISTRICT 40,
28 OR ONE OF THE PRIVATE ENTITIES WHO HAS A CLEARLY

1 RECOGNIZED RAMP DOWN AND FREE FROM REPLACEMENT
2 ASSESSMENT. WE CAN'T TAKE WHAT WE PRODUCE AND EXPORT IT
3 OUT, AND NEITHER CAN PHELAN EXCEPT UNDER THE TERMS OF
4 THE JUDGMENT HERE. IT'S CLEAR. IT SAYS YOU CAN ONLY DO
5 THAT IF IT DOESN'T CAUSE MATERIAL INJURY AND YOU PAY THE
6 REPLACEMENT ASSESSMENT.

7 I SUBMIT TO THE COURT THAT THAT IS THE PROPER
8 WAY TO INTERPRET THIS AGREEMENT AND NOT TO NECESSARILY
9 WEIGH INTO THE, ARE THEY A PRODUCER OR -- THEY'RE A
10 PARTY, AND JUST LIKE EVERY OTHER PARTY IN THE CASE,
11 THEY'RE SUBJECT TO THIS PROHIBITION AGAINST EXPORTATION,
12 EXCEPT THEY GOT SOMETHING VERY BENEFICIAL. SO THEY
13 CANNOT ESCAPE -- THIS IS THE PROBLEM WE'VE HAD FROM
14 PHELAN FROM DAY ONE IS THAT IN EVERY PHASE OF THE TRIAL
15 THEY'RE LOOKING FOR SOME WAY TO CONTINUE TO EXPORT WATER
16 FROM THE ADJUDICATION AREA AND TO DO SO WITHOUT PAYING
17 FOR IT.

18 THE PARTIAL STATEMENT OF DECISION REFLECTS THAT
19 THE EXPORTING OF THAT WATER INTERCEPTS WATER THAT WOULD
20 OTHERWISE GO TO THE BASIN. IT'S HARMFUL, THE COURT
21 SAYS, PARTICULARLY TO THE SUBBASIN AREA, AND THAT UNDER
22 JUST GENERAL PRINCIPLES, WHETHER IT'S AN OVERDRAFT
23 CONDITION, YOU WOULDN'T WANT ANY EXPORT OF WATER OUTSIDE
24 YOUR BASIN.

25 HERE, WE RECOGNIZE THAT THEY WERE PUBLIC WATER
26 SUPPLIER. WE DIDN'T WANT TO CUT OFF THEIR ABILITY TO
27 PUMP, BUT THE JUDGMENT IMPOSES A REPLACEMENT ASSESSMENT,
28 AND I SUBMIT THAT'S VERY FAIR, MORE FAIR THAN PERHAPS

1 THEY'RE ENTITLED TO, TO BE HONEST WITH YOU.

2 THE COURT: COUNSEL?

3 MR. SERPA: BRIEFLY, YOUR HONOR. MANUEL SERPA ON
4 BEHALF OF LITTLE ROCK CREEK, PALM RANCH, AND QUARTZ
5 HILL. WE APPRECIATE THAT PHELAN WILL TAKE THE JUDGMENT
6 AS IT IS. THAT'S WHAT THEY'VE DONE THE TIMING OF THIS
7 MOTION COMES AFTER THE COURT'S ORDER IN FEBRUARY.
8 THEY'RE NOW SEEKING TO EXPLOIT WHAT WE CONTEND IS A
9 MISINTERPRETATION OF THE COURT'S STATEMENTS ON WHAT A
10 PARTY IS IN A DIFFERENT CONTEXT. THEY'RE TRYING TO
11 LATCH ON TO THAT TO CREATE AN EXCEPTION THAT DOESN'T
12 EXIST AND WASN'T CREATED BY THE JUDGMENT, NOR SHOULD IT.

13 PHELAN IS SUBJECT TO THE EXPLICIT EXCEPTION FOR
14 GROUNDWATER BASIN EXPORTATION OF WATER. THAT'S WHAT THE
15 JUDGMENT PROVIDES THEM. IT DOES NOT PROVIDE THEM WITH
16 THE RIGHT TO BENEFIT FROM THE ADJUSTMENT OR THE NEED TO
17 ADJUST OR TRANSITION THAT A RAMP DOWN RIGHT GIVES.
18 THEIR RIGHTS IS VERY EXPLICIT. IT'S OUR POSITION THAT
19 THEY'RE ONLY NOW SEEKING TO MISINTERPRET THE COURT'S
20 FEBRUARY 18TH ORDER TO THEIR BENEFIT IN A MANNER THAT'S
21 INCONSISTENT WITH THE JUDGMENT.

22 THE COURT: OKAY. ALL RIGHT. ANYTHING FURTHER,
23 MS. AILIN?

24 MS. AILIN: YES, YOUR HONOR. WE HAVE GONE
25 DRAMATICALLY FAR AFIELD FROM THE BASIC CONCEPT THAT WHEN
26 YOU ARE LOOKING AT A DOCUMENT AND INTERPRETING IT, WHAT
27 YOU'RE LOOKING AT IS THE LANGUAGE OF THAT DOCUMENT
28 UNLESS IT'S AMBIGUOUS, WHICH NO ONE HERE HAS ARGUED.

1 WE'RE CREATING A SITUATION WHERE NO ONE CAN EVER
2 UNDERSTAND THIS JUDGMENT BECAUSE, OH, WE HAVE TO GO BACK
3 AND READ 15 YEARS WORTH OF TRIAL TRANSCRIPTS AND SEVEN
4 OR EIGHT STATEMENTS OF DECISION. THAT'S NOT HOW THIS
5 JUDGMENT IS INTENDED TO BE INTERPRETED. IT'S INTENDED
6 TO BE INTERPRETED ON ITS LANGUAGE.

7 MR. PARTON TALKS ABOUT AN OPINION THAT WAS THE
8 BASIS FOR THE BOARD'S RESOLUTION. I FIND IT FASCINATING
9 THAT THAT OPINION WASN'T ATTACHED TO THE RESOLUTION AS
10 AN EXHIBIT AND THAT MR. PARTON DID NOT MAKE THAT OPINION
11 AN EXHIBIT TO HIS PAPERS. SO WE'RE REALLY IN A
12 SITUATION WHERE WE DON'T REALLY KNOW -- THE COURT
13 DOESN'T KNOW WHAT THE BOARD BASED ITS DECISION ON.

14 THE COURT: WELL, IT'S NOT UP TO THE BOARD. IT'S
15 UP TO ME.

16 MS. AILIN: THERE WAS A REFERENCE TO PHELAN
17 CLAIMING RIGHTS UNDER 8.3. THAT'S AN EXAGGERATION,
18 BECAUSE WE'RE NOT ASKING FOR A RAMP DOWN RIGHT. WE'RE
19 FOCUSED ON THE FIRST SENTENCE OF 8.3. THERE'S ALSO BEEN
20 SOME REFERENCE -- SOME STATEMENTS HERE GIVING
21 SIGNIFICANCE TO HEADINGS IN THE JUDGMENT. WELL, WE HAVE
22 SECTION 20.10 OF THE JUDGMENT -- EXCUSE ME, 20.12 OF THE
23 JUDGMENT THAT SAYS THOSE HEADINGS ARE JUST FOR
24 REFERENCE, THEY DON'T HAVE MEANING, SO LET'S KEEP THAT
25 IN MIND.

26 THE REFERENCE TO PHELAN MINING WATER, AS
27 MR. DUNN ADMITTED, PHELAN IS NOT THE ONLY ONE DOING
28 THAT. THERE ARE OTHER PARTIES EXPORTING WATER FROM THE

1 BASIN. NO ONE IS SAYING THOSE OTHER PARTIES, BECAUSE OF
2 THEIR EXPORT, HAVE TO PAY A REPLACEMENT WATER ASSESSMENT
3 FOR 2016 AND 2017.

4 THE COURT: THOSE PARTIES, HOWEVER, HAVE A
5 PRODUCTION RIGHT, DON'T THEY?

6 MS. AILIN: THEY DO, BUT IF THE ISSUE IS
7 EXPORT --

8 THE COURT: AND THEY HAVE NO OBLIGATION TO PAY
9 ONE PENNY FOR THEIR PRODUCTION RIGHT AS ITS REDUCED OVER
10 THAT PERIOD OF SEVEN YEARS, TRUE?

11 MS. AILIN: THAT'S ALSO TRUE, BUT IF THEY PRODUCE
12 MORE --

13 THE COURT: THAT'S DIFFERENT -- AND THAT'S
14 DIFFERENT THAN PHELAN'S RIGHT, ISN'T IT?

15 MS. AILIN: IT'S DIFFERENT THAN PHELAN'S RIGHT,
16 BUT THEY HAVE NO RIGHT TO PRODUCE MORE THAN THEIR
17 INTERIM RAMP DOWN, AND NO ONE IS SAYING IF THEY DO
18 PRODUCE MORE THAN THEIR INTERIM RAMP DOWN, THEY DO NOT
19 GET THE BENEFIT OF THE TWO-YEAR EXEMPTION FROM
20 REPLACEMENT WATER ASSESSMENTS. SO IF THE ISSUE IS NOT
21 HAVING A RIGHT, IF THE ISSUE IS HARM TO THE BASIN, IF
22 THE ISSUE IS ANYTHING OTHER THAN ARE YOU A PARTY, ARE
23 YOU A PRODUCER, HOW IS ANYONE TO UNDERSTAND THIS
24 JUDGMENT?

25 THE COURT: WELL, I THINK YOU'RE CHERRY-PICKING
26 LANGUAGE FROM THE JUDGMENT IN ORDER TO JUSTIFY YOUR
27 POSITION. I DON'T HAVE A PROBLEM WITH YOUR DOING THAT.
28 IT'S AN ARGUMENT, AND IT IS NOT AT THIS POINT PERSUASIVE

1 TO ME BECAUSE YOU'RE NOT LOOKING AT THE ENTIRE JUDGMENT
2 AS A WHOLE. THE WHOLE PURPOSE IN CREATING THE RAMP DOWN
3 PROCESS, AND 8.3 IS PART OF THE RAMP DOWN PROCESS, AND
4 THERE IS NO RAMP DOWN SO FAR AS PHELAN IS CONCERNED.
5 PHELAN HAS NO ABSOLUTE RIGHT TO PUMP WATER FOR USE
6 OUTSIDE THE VALLEY, AND THAT'S WHAT THEY'RE DOING RIGHT
7 NOW. THAT'S WHY THE PROVISION IS THERE, FOR THEM TO PAY
8 FOR THE WATER THEY EXTRACT, BECAUSE IT DOES HARM THE
9 AQUIFER, UNLESS THE WATER IS REPLACED AND THAT'S THE
10 PURPOSE OF THE REPLACEMENT WATER ASSESSMENT.

11 MS. AILIN: AND IT'S A DROP IN THE BUCKET
12 COMPARED TO WHAT EVERYBODY ELSE IS PUMPING RIGHT NOW AND
13 NOT PAYING REPLACEMENT WATER ASSESSMENT FOR.

14 THE COURT: THAT MAY BE, AND YOUR ARGUMENT ISN'T
15 THAT IT'S NOT MATERIAL. YOUR ARGUMENT IS THAT THEY
16 SHOULD BE ENTITLED TO PUMP FOR TWO YEARS WITHOUT PAYING,
17 BUT THERE'S NO QUESTION IN THE COURT'S MIND THAT THAT
18 PUMPING CAUSES DETRIMENT, UNLESS IT'S PAID FOR SO THAT
19 IT CAN BE REPLACED. I LOOK AT IT AS A ONE-FOR-ONE
20 SITUATION. YOU TAKE OUT AN ACRE FOOT OF WATER, YOU PAY
21 FOR THE REPLACEMENT OF THAT ACRE FOOT OF WATER. THE MAX
22 IS 1,200 ACRE FEET PER YEAR, BUT THERE'S NO QUESTION
23 THAT UNLESS THAT REIMBURSEMENT OCCURS SO THAT THE
24 FURTHER THE WATER CAN BE REPLACED, THERE IS FURTHER
25 DETRIMENT TO THE AQUIFER. I DON'T THINK -- YOU'RE
26 CERTAINLY NOT ARGUING THAT YOU DON'T HAVE TO PAY SO LONG
27 AS THE JUDGMENT IS IN PLACE IN ANY EVENT FOR THE YEARS
28 AFTER 2017.

1 MS. AILIN: THAT'S CORRECT. WE'RE NOT ARGUING
2 THAT.

3 THE COURT: AND I THINK THAT KIND OF EXEMPLIFIES
4 WHY YOU SHOULD NOT BE RELIEVED OF THE OBLIGATION TO PAY
5 FOR THE PREVIOUS TWO YEARS. IN ANY EVENT --

6 MS. AILIN: WE'RE LEFT WITH A SITUATION THAT WE
7 DON'T KNOW WHEN WE'RE A PRODUCER AND WHEN WE'RE NOT,
8 BECAUSE THE COURT IS SAYING WE'RE NOT A PRODUCER FOR
9 PURPOSES OF THE FIRST SENTENCE OF SECTION 8.3, BUT WE
10 ARE FOR SECTION 9.2.

11 THE COURT: WELL, YOU'RE NOT PUMPING FOR THE
12 REASONABLE BENEFICIAL USE OF THE AQUIFER. THERE'S NO
13 QUESTION ABOUT THAT. YOU'RE PUMPING FOR THE USE OF YOUR
14 SERVICE AREA, WHICH IS OUTSIDE THE ADJUDICATION AREA.

15 MS. AILIN: WHICH JUST HIGHLIGHTS ONE OF THE
16 PROBLEMS WITH THE JUDGMENT, WHICH IS IGNORING
17 HYDROGEOLOGIC BOUNDARIES, BUT THAT'S NOT A QUESTION FOR
18 TODAY.

19 THE COURT: WELL, I WORRY ABOUT THAT.

20 MS. AILIN: SO DO I.

21 THE COURT: BUT THERE'S NOTHING I CAN DO ABOUT
22 THAT. IF THERE WERE, I MIGHT. IN ANY EVENT, IS THERE
23 ANY FURTHER ARGUMENT?

24 MR. PARTON: NO.

25 THE COURT: MR. BUNN, YOU WANT TO BE HEARD IN
26 THIS MATTER?

27 MR. BUNN: JUST ON ONE MINOR POINT, YOUR HONOR.
28 THOMAS BUNN, B-U-N-N, APPEARING FOR PALMDALE WATER

1 DISTRICT. I JUST WANTED TO ANSWER AT LEAST IN MY MIND A
2 QUESTION ASKED BY THE COURT, AND THAT WAS WITH REFERENCE
3 TO THE PROVISION OF THE JUDGMENT THAT TALKS ABOUT
4 NON-STIPULATING PARTIES.

5 THE COURT: 5.1. --

6 MR. BUNN: POINT 10. THAT PROVISION SAYS -- I'LL
7 JUST READ PART OF THE SENTENCE. IT SAYS, "SHOULD THE
8 COURT, AFTER TAKING EVIDENCE, RULE THAT A
9 NON-STIPULATING PARTY HAS A PRODUCTION RIGHT, THE
10 NON-STIPULATING PARTY SHALL BE SUBJECT TO ALL PROVISIONS
11 OF THIS JUDGMENT, INCLUDING REDUCTION IN PRODUCTION
12 NECESSARY TO IMPLEMENT THE PHYSICAL SOLUTION AND THE
13 REQUIREMENTS TO PAY ASSESSMENTS, BUT SHALL NOT BE
14 ENTITLED TO BENEFITS PROVIDED BY STIPULATION."

15 THAT SENTENCE DOES NOT LITERALLY APPLY BECAUSE
16 THE COURT DID NOT RULE THAT PHELAN HAD A PRODUCTION
17 RIGHT, BUT NEVERTHELESS, I THINK THE CONCEPT THAT A
18 PARTY WHO DID NOT SIGN THE STIPULATION IS NOT ENTITLED
19 TO THE BENEFIT OF THE STIPULATION IS CLEARLY EXPRESSED
20 IN THAT SENTENCE AND THAT'S AN ADDITIONAL REASON FOR THE
21 COURT TO RULE THAT --

22 THE COURT: I WAS HOPING SOMEBODY WOULD AGREE
23 WITH ME. ALL RIGHT. THANK YOU, MR. BUNN.

24 MR. PARTON: THANK YOU, YOUR HONOR.

25 MR. BUNN: THANK YOU, YOUR HONOR.

26 THE COURT: ALL RIGHT. IS THERE ANYBODY ON
27 COURTCALL WHO WISHES TO BE HEARD?

28 IS THERE ANYBODY ON COURTCALL? OKAY. ALL

1 RIGHT. SO THE MATTER WILL BE ORDERED SUBMITTED.

2 MR. PARTON: THANK YOU, YOUR HONOR.

3 MR. SERPA: THANK YOU, YOUR HONOR.

4 THE COURT: IS THERE ANYTHING ELSE FOR US TO DO
5 HERE THIS MORNING?

6 MR. PARTON: NO, WE HAVE TWO MOTIONS ON FOR APRIL
7 30TH.

8 THE COURT: THE 30TH, YES.

9 MR. PARTON: YEP.

10 THE COURT: OKAY.

11 MR. PARTON: THANK YOU, YOUR HONOR.

12 THE COURT: THANK YOU VERY MUCH EVERYBODY. WE'RE
13 IN RECESS.

14 (CONCLUSION OF THE PROCEEDINGS.)
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 31

HON. JACK KOMAR, JUDGE

ANTELOPE VALLEY GROUNDWATER CASES.

NO. JCCP4408

REPORTER'S
CERTIFICATE

I, JORGE P. DOMINGUEZ, OFFICIAL PRO TEMPORE
REPORTER OF THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY
CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 27,
INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE PROCEEDINGS HELD IN DEPARTMENT 31 ON
APRIL 18, 2018, IN THE MATTER OF THE ABOVE-ENTITLED
CAUSE.

DATED THIS 1ST DAY OF MAY, 2018.

Jorge P. Dominguez

JORGE P. DOMINGUEZ, CSR NO. 12523
OFFICIAL PRO TEMPORE REPORTER

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ANTELOPE VALLEYGROUNDWATER CASES

Judicial Council Coordination Proceeding No. 4408

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Judy C. Carter,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Ave., Suite 475, El Segundo, CA 90245.

On May 29, 2018, I served the within document(s) described as **APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL (UNLIMITED CIVIL CASE)** on the interested parties in this action as follows:

BY ELECTRONIC SERVICE: By posting the document(s) listed above to the Antelope Valley WaterMaster website in regard to Antelope Valley Groundwater matter with e-service to all parties listed on the websites Service List. Electronic service and electronic posting completed through www.avwatermaster.org via Glotrans.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to Craig Andrews Parton listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

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*Attorney for Watermaster Board for the Antelope
Valley Groundwater Adjudication*

VIA OVERNIGHT MAIL

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

Executed on May 29, 2018, at El Segundo, California



Judy C. Carter