

1 CRAIG A. PARTON, State Bar No. 132759
TIMOTHY E. METZINGER, State Bar No. 145266
2 CAMERON GOODMAN, State Bar No. 307679
PRICE, POSTEL & PARMA LLP
3 200 East Carrillo Street, Fourth Floor
4 Santa Barbara, California 93101
Telephone: (805) 962-0011
5 Facsimile: (805) 965-3978

Exempt from Filing Fees
Government Code § 6103

6 Attorneys for
7 Antelope Valley Watermaster

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

10
11 Coordination Proceeding,
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

12 LASC Case No.: BC 325201

13 **ANTELOPE VALLEY**
14 **GROUNDWATER CASES**

Santa Clara Court Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar, Judge of
the Santa Clara Superior Court

15 **WATERMASTER'S OPPOSITION TO**
16 **THE PEOPLE CONCERN, INC'S**
17 **MOTION FOR ACTION AND**
IMPLEMENTATION

18 **AND ALL RELATED ACTIONS**

Date: August 24, 2023
Time: 2:00 p.m.
19 Dept: Courtcall

20 **I. Introduction**

21 The Motion by The People Concern, Inc. ("TPC"), as agent for Barrel Springs Properties,
22 LLC ("**Barrel Springs**") should be denied. The Motion asks the Court to compel the Antelope Valley
23 Watermaster ("**Watermaster**") to approve an application for New Production based solely on the fact
24 that the Watermaster Engineer made findings that Material Injury associated with the proposed New
25 Production would be negligible. The Motion ignores the Watermaster's inherent discretion under the
26 December 23, 2015 Judgment and Physical Solution in the Antelope Valley Groundwater
27 Adjudication ("**Judgment**") to approve or deny applications for New Production based on a wide
28 variety of factors as appropriate to protect the health of the Basin.

1 **II. Statement of Facts**

2 Barrel Springs, acting as agent for TPC, submitted a New Production application to the
3 Watermaster dated September 30, 2022 (the “**Application**”), seeking approval of New Production
4 in the amount of 120 acre-feet per year for domestic, landscape and agricultural use on three
5 contiguous parcels identified with Los Angeles County Assessor’s Parcel Numbers 3052-16-017,
6 3052-16-010 and 3052-026-050 (collectively, the “**Properties**”). Barrel Springs owns the
7 Properties, and submitted the Application on behalf of TPC who will develop the Properties as a
8 125-acre “Farming and Farmworker Housing Development Community” (the “**Project**”). (Barrel
9 Springs Compendium of Evidence (“**COE**”) Exh. 5, pp. 14-48.)

10 Although Barrel Springs is identified in Exhibit C to the Judgment, Barrel Springs’ status
11 as a member of the Small Pumper Class came from its prior ownership of a parcel unrelated to the
12 Properties, which Barrel Springs has sold. (Larson Decl. at 3:19-21.) A Party is a member of the
13 Small Pumper Class by virtue of water rights associated with historical water use on an existing
14 household or a particular parcel, which rights are non-transferrable except to another parcel
15 owned by such Party. (Judgment at 5.1.3.3.) Therefore, for purposes of the Properties, the
16 Application and the Motion, Barrel Springs is not a member of the Small Pumper Class, but rather
17 a member of the Non-Pumper Class, and there are no Groundwater rights associated with the
18 Properties. (Judgment at 3.5.22, 5.1.2.)

19 The Watermaster Engineer received the Application on October 4, 2022, and on October
20 5, 2022, asked for additional clarifying information from Barrel Springs. Barrel Springs did not
21 provide responses to the Watermaster Engineer’s inquiries until October 11, 2022. (Wells Decl. at
22 ¶4.)

23 Upon review of Barrel Springs’ responses, the Watermaster Engineer determined it could
24 not complete its evaluation of the Application prior to the October Watermaster Board meeting,
25 and would need to postpone consideration thereof until the next meeting on December 7, 2022.
26 The need for additional time related to complex issues associated with the Application, including
27 but not limited to the unprecedented amount of New Production being requested, combined with
28 the relative lack of hydrogeologic data for the vicinity of the Project (Wells Decl. at ¶5.)

1 The Watermaster Engineer then followed-up with Barrel Springs via email on November
2 17, 2022, to request additional information and clarification about the Application. (COE Exh. 6,
3 p. 6.) Among other items of concern, the Engineer noted that the Application was “one of the
4 highest that we have received to date,” and highlighted that a lack of local hydrogeologic
5 information would make the Material Injury analysis more difficult. (COE Exh. 6, p. 6.) The
6 Watermaster Engineer therefore asked whether Barrel Springs “intend[s] to drill a test well and
7 conduct an aquifer test to develop aquifer parameters to better identify potential impacts on local
8 wells and to determine if a well in the proposed location can support a water use of 120 AFY.”
9 The Watermaster Engineer sought additional information such as the exact location and status of
10 other wells within the vicinity of the Project to better evaluate the potential impacts of the
11 proposed New Production. (COE Exh. 6, p. 6.)

12 On November 20, 2022, representatives of Palmdale Water District asked that the
13 Watermaster’s consideration of the Application be delayed until the full background of the
14 Properties and proposed use were fully understood by the District, which may impact the
15 District’s serviceability letter for the Project. (Wells Decl. at ¶7.) The Project’s serviceability
16 letter was eventually re-issued on December 12, 2022. (COE Exh. 5, p. 42.) This was part of the
17 reason the Watermaster Board’s consideration of the Application was delayed until January 2023.

18 After a follow-up conversation between the Watermaster Engineer and Barrel Springs on
19 November 21, 2022, questions remained regarding the lack of local hydrologic information, the
20 exact location and status of nearby wells, and whether the Project should be divided into phases to
21 reduce the initial New Production amount sought in the Application. (COE Exh. 6, pp. 4-5.)
22 Dividing the Project into phases would allow Barrel Springs to conduct an aquifer test on a test
23 well so that aquifer parameters could be developed to better identify potential impacts on local
24 wells, and to determine the amount of water a well could produce in the area of the Project, which
25 information would then be used to evaluate potential additional phases of the Project. (COE Exh.
26 6, pp. 4-5.)

27 ///

28 ///

1 The Watermaster Engineer requested this additional information on November 21, 2022,
2 and Barrel Springs provided a written response on November 30, 2022, ignoring most of the
3 questions posed by the Watermaster Engineer, including the request for information regarding
4 nearby existing wells. (COE Exh. 6 at pp. 3-4; Wells Decl. at ¶6, Exh. 1.) Because of the
5 additional information necessary for the Watermaster Engineer to complete a Material Injury
6 analysis, and the fact that Palmdale Water District requested that consideration of the Application
7 be postponed until January, the Application could not be considered by the Watermaster at the
8 December 7, 2022 Watermaster Board meeting. (COE Exh. 6 at pp. 3-4; Wells Decl. at ¶¶6, 7.)

9 The Watermaster Engineer's Material Injury findings on the Application dated January 11,
10 2023 (the "**Findings**") were considered by the Watermaster Board at its January 25, 2023 regular
11 meeting. At the January Watermaster meeting, members of the Advisory Committee requested
12 additional time to review and provide input on the Application. The Watermaster Board directed
13 the Watermaster Engineer and the General Counsel to work with Barrel Springs to gather the
14 pertinent information to answer open questions regarding the Application, and continued the
15 matter until the February Board meeting. (Montoya Decl. at ¶3, Exh. 1.)

16 On February 10, 2023, Barrel Springs requested that the Application not be considered by
17 the Watermaster Board or the Advisory Committee in February. It was not until early April 2023
18 that Barrel Springs requested that the Application again be considered by the Advisory
19 Committee and the Board. (Montoya Decl. at ¶4-5.)

20 The Application and the Findings were considered by the Advisory Committee at its April
21 19, 2023 meeting, and after extended discussions the committee could not come to a consensus on
22 how to proceed, with three members voting to approve the Application, one member voting to
23 deny the Application, and five members abstaining. (Montoya Decl. at ¶6, Exh. 2.)

24 The Findings were then considered by the Watermaster Board at its April 26, 2023 regular
25 meeting. Although the Watermaster Engineer determined in the Findings that the Application was
26 complete and would have negligible Material Injury, the Findings noted several potential areas of
27 concern that remain unanswered to date:

28 ///

- 1 • “In order to produce 120 AFY, the well would need to pump 74.4 gpm on a
2 continuous basis, making the drawdowns at this pumping rate about 3.7 times
3 greater than the example analysis (i.e., 92 feet at a distance of 1,000 feet). The
4 application estimated that the proposed well would have a pumping capacity up to
5 150 gpm. This drawdown has a greater potential to adversely impact nearby wells
6 depending on the construction and current condition of the well.”
- 7 • “Material Injury analysis and approval of this New Production application does not
8 guarantee that a well drilled in this area will produce the needed 120 AFY.”
- 9 • “Due to the remote location of this project and potential hydrogeologic
10 disconnection, the risk for material injury appears to be low, but given the
11 uncertainty of the local complex hydrogeology, future impacts to existing wells
12 cannot be ruled out.”
- 13 • “[G]iven the local hydrogeological uncertainty, Todd Groundwater recommends
14 that the Watermaster require the applicant to conduct an aquifer test on the new
15 well for an improved understanding of aquifer conditions; all well information,
16 including lithological data, construction information, and test results, should be
17 provided to the Watermaster.” (COE Exh. 5, p. 17.)

18 After considering the Findings, including hearing public comments, a statement from a
19 Barrel Springs representative, and input from the Watermaster Administrator and the Watermaster
20 Engineer, all but one Watermaster Board member voted to approve the Application. (COE Exh.
21 3.) The Board member who voted against approval, Director Kathy MacLaren, chose not to
22 articulate her reasons for denying the Application at the public meeting.

23 On May 8, 2023, counsel for Barrel Springs sent a letter requesting that the Watermaster
24 Board reconsider its vote on the Application, or allow Barrel Springs to “re-apply” for the New
25 Production immediately “in order to avoid litigation.” (COE Exh. 2.) The Watermaster Board
26 considered the threat of litigation in closed session at its May 24, 2023 meeting, and thereafter
27 two Watermaster Board members, Watermaster General Counsel, and counsel and representatives
28 for Barrel Springs met on May 25, 2023 to discuss a possible resolution.

1 On the same day as the May 25 meeting, Watermaster General Counsel sent a follow-up
2 email to counsel for Barrel Springs requesting additional information for the Watermaster Board
3 review ahead of its scheduled “reconsideration” of the Application at its June 29, 2023 meeting.
4 Watermaster General Counsel’s email offered to stipulate to an extension of time for Barrel
5 Springs to file a motion challenging the Watermaster’s denial of the Application, and to also
6 waive any additional fees that may have otherwise been required for such reconsideration.
7 General Counsel laid out seven categories of questions that the Watermaster Board wanted
8 addressed:

- 9 1. Whether the Application is correct in its water calculations for domestic use (i.e., 10 acre-
10 feet per year servicing 144 people)?
 - 11 ➤ This information was intended to assist the Watermaster in determining whether
12 the unprecedented amount of New Production sought in the Application would be
13 sufficient for the Project, or whether it would be necessary to seek additional
14 amounts in the future, potentially raising Material Injury concerns once the Project
15 is underway and inhabited.
- 16 2. Whether Replacement Water is capable of recharging the pertinent area of the Basin in
17 which the Project is located?
 - 18 ➤ This question relates to the Watermaster Engineer’s determination that there is a
19 disconnect between the area of the Basin in which the Project is located and the
20 rest of the Basin, and the Watermaster Board’s concern that Replacement Water
21 may not actually recharge the area, in which case payment of Replacement Water
22 Assessments would not have the desired effect of replacing the Groundwater
23 Produced in excess of Barrel Springs’ Production Rights.
- 24 3. Whether there is potential for the Project to impact wells in the area?
 - 25 ➤ This relates to the Watermaster Engineer’s Material Injury analysis, which
26 identified a gap in this important data given Barrel Springs’ refusal or inability to
27 provide additional information about the nearby wells that were identified in the
28 Application, as requested by the Watermaster Engineer as early as November 2022.

1 4. Whether the Project is impacted by the rules pertaining to Small Community Water
2 Systems, and if so, is it in compliance with those rules?

3 ➤ This question relates to the concern that Barrel Springs may not comply with
4 applicable requirements for operating a small water system under regulation by the
5 State, and if the water system established for the Project through the well in the
6 Application fails to meet health and safety standards, will Palmdale Water District
7 be required to step-in and provide water for the Project, notwithstanding the
8 serviceability letter issued on December 12, 2022? (COE Exh. 5 at p. 42.)

9 5. Whether it is relevant that the Project is located near the State aqueduct?

10 ➤ This relates to lingering concern by some Watermaster Board members that the
11 Project may cause cross-contamination with State Water Project water given the
12 proximity to the aqueduct.

13 6. Whether the Watermaster Board has approved similar or even larger New Production
14 applications in the past, and if so, which ones?

15 ➤ Barrel Springs, during the application process and in the Motion, suggests that the
16 Watermaster must approve the Application because it satisfies the bare minimum
17 requirements for New Production applications set forth in the Judgment, and
18 because no other application for New Production has been denied after having
19 satisfied these minimum requirements. This question relates to the fact that the
20 Application seeks an unprecedented amount of New Production, which among
21 other factors sets it apart from any other application for New Production that has
22 been considered and acted upon by the Watermaster to date.

23 7. Whether Barrel Springs will consider conditioning the approval of its Project on a
24 successful aquifer test that demonstrates sufficient capacity to meet Project needs?

25 ➤ Barrel Springs consistently pushed back on this Watermaster Engineer
26 requirement—which is necessary to protect the health of the Basin—and the
27 Watermaster felt it was appropriate to confirm that Barrel Springs would comply
28 with this condition of approval before it could reconsider the Application.

1 The General Counsel email requested responses well in advance of the June Watermaster Board
2 meeting in order to give the Watermaster Engineer, as well as the Advisory Committee, time to
3 reflect on Barrel Springs' responses. (COE Exh. 1 at p. 3.)

4 Having received no response to the May 25, 2023 email, Watermaster General Counsel
5 followed-up via email on June 2, 2023, asking for confirmation that Barrel Springs would provide
6 supplemental responses to some or all of the questions prior to the Watermaster Board's June
7 regular meeting. (COE Exh. 1 at p. 2.) Two weeks later, on June 16, 2023, counsel for Barrel
8 Springs responded to each question as follows:

- 9 1. "The Watermaster's engineer has already verified these calculations, which were included
10 in our original application. Indeed, the Board already has delayed this project
11 unnecessarily by claiming it too complicated to process timely, which delayed us from
12 October 2022 to April 2023. The staff report prepared for the April Board meeting vetted
13 and approved the calculations, finding them to be correct."

14 ➤ This response ignores the question and mischaracterizes the Findings. The
15 Watermaster Engineer did not independently verify whether Barrel Springs'
16 calculations were adequate for purposes of supplying water to the Project beyond
17 what was provided in the Application. (Stanin Decl. at ¶4.) The Application was
18 denied, and even if the accuracy of Barrel Springs' original calculations were not
19 questioned during the Watermaster's original consideration thereof, the
20 Watermaster has determined, in its reasonable discretion, that the accuracy of these
21 calculations is pertinent to any reconsideration.

- 22 2. "The Watermaster's engineer addressed replacement water as well. No new or different
23 information has come to light that would alter that analysis."

24 ➤ This is incorrect. The Findings never addressed the specific question of whether
25 Replacement Water is hydrogeologically capable of recharging the area of the
26 Basin in which the Project will be located. Even if this question was not raised
27 during the Watermaster's original consideration of the Application, it is pertinent
28 to its reconsideration thereof, and Barrel Springs has made no effort to address it.

1 3. “Impact to wells in the vicinity likewise already has been addressed by the Watermaster’s
2 engineer, who found no Material Injury will result from the proposed production.”

3 ➤ This misstates the Findings, which includes the caveat that, “given the uncertainty
4 of the local complex hydrogeology, future impacts to existing wells cannot be
5 ruled out,” and ignores the fact that the Watermaster Engineer has repeatedly asked
6 Barrel Springs for additional information related to nearby wells, yet Barrel
7 Springs continues to refuse to provide any substantive response. (Stanin Decl. at
8 ¶5.) The potential for the Project to impact nearby wells is directly related to a
9 Material Injury analysis. The Watermaster is within its discretion to seek
10 additional information on this topic to substantiate the Findings.

11 4. “Rules relating to Small Community Water Systems have no bearing on the determination
12 with respect to Material Injury.”

13 ➤ Even assuming the applicable community water system rules have no bearing on
14 the Material Injury determination, as discussed below the Watermaster has
15 discretion to investigate whether a New Production application implicates
16 potentially complex issues related to other Parties to the Judgment and their
17 respective water rights and obligations. This question is directly related to whether
18 Palmdale Water District will be forced to provide water to the Project
19 notwithstanding its determination that providing water would be infeasible absent
20 construction of additional infrastructure.

21 5. “The Watermaster’s engineer already has addressed the relevance of proximity to the San
22 Andreas fault.”

23 ➤ Again, the Watermaster is within its discretion to seek additional information
24 regarding the potential impacts of the Project’s location directly on top of the San
25 Andreas Fault, which the Watermaster Engineer has determined could impact
26 hydrogeologic connectivity and nearby wells, all of which is relatively unknown
27 based on current available data.

28 ///

1 6. "Those data are known to the Board."

2 ➤ Barrel Springs has turned down an opportunity to explain why the Application
3 should be approved on the mere basis of having satisfied the basic requirements for
4 approval of a New Production application, notwithstanding the substantial
5 unknowns and unprecedented amount of New Production. This is the main legal
6 contention in the Motion, yet Barrel Springs makes no efforts to explain why the
7 New Production application is ministerial in nature, as it suggests.

8 7. "The Watermaster's engineer already has addressed the issue of capacity. Conditioning
9 approval on the completion of a successful aquifer test is not reconsideration, it is a
10 different application."

11 ➤ This is incorrect. The Watermaster Engineer remains concerned about the
12 proposed well's capacity, its potential to impact nearby wells, and the feasibility of
13 Replacement Water recharging this area of the Basin. These questions were raised
14 by the Watermaster Engineer from the date it received the Application, and Barrel
15 Springs continuously pushed back on this requirement. In light of the uncertainty
16 of the hydrogeologic conditions in the area, the Watermaster exercised its sound
17 discretion in seeking to impose this as a condition of approval upon
18 reconsideration of the Application. (Stanin Decl. at ¶6.)

19 After refusing to substantively answer any of General Counsel's questions, counsel for Barrel
20 Springs rejected the Watermaster's offer to reconsider the Application and indicated that it would
21 pursue its remedies under California law. (COE Exh. 1 at p. 1-2.)

22 **III. Discussion**

23 In its Motion, Barrel Springs attempts to characterize the New Production application
24 process as ministerial; one in which, so long as the applicant provides certain information and the
25 Watermaster Engineer makes certain findings, the application must be approved, and the
26 Watermaster has no further discretion to investigate and seek additional information before
27 approval. This is not the process set forth in the Judgment.

28 ///

1 The purpose behind the Judgment is to prevent overdraft and protect the overall health of
2 the Basin in furtherance of the interests of all Parties thereto in a manner that advances reasonable
3 and beneficial use of the state's water supply. (Judgment at 3.4 ("This Judgment will facilitate
4 water resource planning and development by the Public Water Suppliers and individual water
5 users.") and fn. 1 (discussing California law governing groundwater basin physical solutions).)
6 The Watermaster has been appointed by the Court to administer the Judgment pursuant to these
7 guiding principles. (Judgment at 3.5.52, 18.4.)

8 "Material Injury" is defined as "impacts to the Basin caused by pumping ... of
9 Groundwater that...[c]auses material physical harm to the Basin, any Subarea, or any Producer,
10 Party or Production Right, including, but not limited to, Overdraft, degradation of water quality
11 by introduction of contaminants to the aquifer by a Party and/or transmission of those introduced
12 contaminants through the aquifer, liquefaction, land subsidence and other material physical injury
13 caused by elevated or lowered Groundwater levels." (Judgment at 3.5.18.1.)

14 "The Watermaster shall consider and determine whether to approve applications for New
15 Production after consideration of the recommendation of the Watermaster Engineer." (Judgment
16 at 18.4.9 (emphasis added).)

17 "[T]he Watermaster Engineer has authority to recommend [to the Watermaster] that the
18 application for New Production be denied, or approved on condition of payment of a Replacement
19 Water Assessment." (Judgment at 18.5.13 (emphasis added).)

20 "The Watermaster Engineer shall not make recommendation for approval of an
21 application to commence New Production of Groundwater unless the Watermaster Engineer
22 finds, after considering all the facts and circumstances including any requirement that the
23 applicant pay a Replacement Water Assessment required by this Judgment or determined by the
24 Watermaster Engineer to be required under the circumstances, that such New Production will not
25 cause Material Injury." (Judgment at 18.5.13.2 (emphasis added).)

26 "No Party or Person shall commence New Production of Groundwater from the Basin
27 absent recommendation by the Watermaster Engineer and approval by the Watermaster."
28 (Judgment at 18.5.13.3 (emphasis added).)

1 The aforementioned language of the Judgment demonstrates that consideration of an
2 application for New Production involves at least two discretionary approvals: first the
3 Watermaster Engineer must make a Material Injury determination and a recommendation for
4 approval or denial, and second the Watermaster must consider the Watermaster Engineer's
5 recommendation and take action thereon. Nothing in the Judgment makes the Watermaster
6 Engineer's review and approval a ministerial process whereby certain application conditions are
7 satisfied and the Watermaster's review and approval is automatic and a foregone conclusion. To
8 the contrary, the Watermaster is authorized and obligated to consider all applications—New
9 Production or otherwise—in light of the impacts to the entirety of the Basin and all potentially
10 impacted Parties in furtherance of the Court's jurisdiction to protect the overall health of the
11 Basin and ensuring reasonable and beneficial use of the Groundwater therein.

12 The Application constitutes the largest single application for New Production that has
13 been presented to the Watermaster to date. The Application is also unique given the relative lack
14 of hydrogeologic data regarding the surrounding area of the Basin. Although the Watermaster
15 Engineer made a determination based on the limited data available at the time the Findings were
16 generated, the Watermaster still has questions about potential impacts to nearby wells, whether
17 the geology surrounding the Project area will preclude any recharge from Replacement Water,
18 and whether the numbers presented in the Application will realistically serve the proposed
19 domestic uses of the Project. Barrel Springs was provided with an opportunity to answer all of
20 these questions, but refused to engage further with the Watermaster and instead has sought this
21 Court's intervention to compel the Watermaster to approval an application with more questions
22 than answers.

23 The Court should not disturb the Watermaster's sound discretion to investigate pertinent
24 details of an unprecedented application for New Production in furtherance of the Court's
25 directives under the Judgment.

26 ///

27 ///

28 ///

1 **IV. Conclusion and Prayer for Relief**

2 For the above-stated reasons, the Watermaster respectfully requests that the Court deny
3 the Motion in its entirety.

4 Respectfully submitted,

5 Dated: August 10, 2023

PRICE, POSTEL & PARMA LLP

6
7 By: _____

CRAIG A. PARTON

TIMOTHY E. METZINGER

CAMERON GOODMAN

Attorneys for

Antelope Valley Watermaster

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

3 I am employed in the County of Santa Barbara, State of California. I am over the age of
4 eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street,
Fourth Floor, Santa Barbara, California 93101.

5 On August 10, 2023, I served the foregoing document described **WATERMASTER'S**
6 **OPPOSITION TO THE PEOPLE CONCERN, INC'S MOTION FOR ACTION AND**
7 **IMPLEMENTATION** on all interested parties in this action by placing the original and/or true
copy.

8 ☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara
9 County Superior Court Website @ www.scefilings.org and Glotrans website in the action of
the Antelope Valley Groundwater Cases.

10 ☒ (*STATE*) I declare under penalty of perjury under the laws of the State of California that
11 the foregoing is true and correct.

12 ☐ (*FEDERAL*) I hereby certify that I am employed in the office of a member of the Bar of
this Court at whose direction the service was made.

13
14 Executed on August 10, 2023, at Santa Barbara, California.

15 
16 _____
17 Signature
18 Elizabeth Wright
19
20
21
22
23
24
25
26
27
28