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

12 Coordination Proceeding,
13 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

14 **ANTELOPE VALLEY**
15 **GROUNDWATER CASES**

LASC Case No.: BC 325201

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

16
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18
19
20 **AND ALL RELATED ACTIONS**

**WATERMASTER'S REPLY TO
ZAMRZLAS' OPPOSITION TO
RENEWED MOTION FOR MONETARY,
DECLARATORY AND INJUNCTIVE
RELIEF**

Date: November 17, 2023
Time: 9:00 a.m.
Dept.: CourtCall

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Cases

People v. American Surety Co. (2019) 31 Cal.App.5th 3804
In re Estate of Waters, (1919) 181 Cal. 5845
Miller v. Gross (1975) 48 Cal.App.3d 6084

Other Authorities

Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2022) ¶ 7.269 p. 7-775

1 **I. INTRODUCTION**

2 The Court should award the monetary, declaratory and injunctive relief sought by the
3 Watermaster in its motion filed against the Zamrzlas on September 29, 2021, as modified by the
4 Watermaster’s renewed motion filed on October 11, 2023 (the “**Watermaster Motion**”).

5 The Watermaster Motion is not automatically stayed pending the appeal of the Court’s
6 June 9, 2023 Order denying the Zamrzlas’ motions to set aside or modify the Judgment (the
7 “**Order**”), and the court should not exercise discretion to stay the Watermaster Motion pending
8 the outcome of the appeal of the Order.

9 The amount of water pumped by the Zamrzlas on their respective properties during the
10 year 2018—and consequently the amount of RWAs sought by the Watermaster in the
11 Watermaster Motion—remains undisputed. Therefore there is no further need for discovery,
12 designation of experts and/or presentation of testimony with respect to the Watermaster Motion in
13 the event the appeal of the Order is unsuccessful. Since the calculation of the RWAs is
14 indisputable, the interest thereon is likewise indisputable and authorized under the Judgment.

15 Finally, the Judgment explicitly authorizes the Watermaster to recover delinquent RWAs
16 “together with” attorneys’ fees incurred in RWA collection efforts pursuant to a noticed motion,
17 which the Watermaster has done by way of the Watermaster Motion, as renewed herein.

18 There are simply no more barriers to this Court awarding the relief sought in the
19 Watermaster Motion, especially given that the Watermaster will not seek to enforce any money
20 judgment against the Zamrlzas pending the appeal of the Order.

21 **II. THERE IS NO BASIS FOR A STAY OF THE WATERMASTER’S MOTION**

22 **A. THERE IS NO AUTOMATIC STAY**

23 The Zamrzlas’ appeal of the Order does not automatically stay enforcement of the
24 Judgment. It is well established that the appeal of a post-judgment order denying a motion to set
25 aside or vacate a judgment does not stay the enforcement of the underlying judgment. (*People v.*
26 *American Surety Co.* (2019) 31 Cal.App.5th 380, 393 (“If an appeal is taken from an order after
27 final judgment [citation] but not from the judgment itself, a stay of the appealed order does not
28 stay the underlying judgment [citation].”)); see also *Miller v. Gross* (1975) 48 Cal.App.3d 608,

1 612-613 (appeal from denial of motion to vacate judgment did not stay enforcement of the
2 underlying judgment); Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter
3 Group 2022) ¶ 7.269 p. 7-77.)

4 In this case, the Zamrzlas have only appealed the Order denying their motions to set aside
5 or modify the Judgment. They have not appealed the Judgment itself. Because the appeal of a
6 post-judgment order does not stay enforcement of the underlying judgment, the Zamrzlas' appeal
7 of the Order does not affect the enforceability of the Judgment. The Court instead is fully
8 empowered to grant the relief requested in the Watermaster Motion.

9 In their Opposition, the Zamrzlas make no attempt to dispute or distinguish the above
10 authorities holding that the appeal of a post-judgment order does not stay the enforcement of the
11 underlying appeal. The Zamrzlas instead simply cite a century-old case, *In re Estate of Waters*,
12 (1919) 181 Cal. 584, for the general proposition that the filing of an appeal divests the trial court
13 of jurisdiction. *In re Estate of Waters* did not address the issue presented here and does not
14 support the Zamrzlas' position, but instead holds that "where . . . a separate appeal from an order
15 on a motion for a new trial is authorized, the perfection of an appeal from the judgment or order
16 in the main proceeding does not divest the court of jurisdiction to hear and determine the motion."
17 (*Id.* at p. 587.) This holding merely underscores the fact that in many circumstances the appeal of
18 a judgment or order will *not* stay proceedings relating to a different order, as is the case here.

19 **B. THERE IS NO BASIS FOR A DISCRETIONARY STAY**

20 The Zamrzlas have also failed to identify any persuasive grounds for the issuance of a
21 discretionary stay. The Watermaster has already indicated in its moving papers that it will
22 forebear from enforcing the monetary component of the order requested in the Watermaster
23 Motion pending the Zamrzlas' appeal of the Order. The Zamrzlas consequently are unable to
24 identify any unfair prejudice resulting from the Court ruling on the Watermaster Motion, in part
25 because the RWAs sought in the Watermaster Motion are based on the Zamrzlas undisputed, self-
26 reported production numbers for the year 2018, eliminating the need for any discovery, experts or
27 testimony on this factual issue.

28 In contrast, the Watermaster will be unfairly prejudiced if the Court delays ruling on the

1 Watermaster Motion until after the appeal of the Order is completed. If the appeal of the Order is
2 unsuccessful, and the Court then proceeds to rule on the Watermaster Motion, the Zamrzlas will
3 be able to appeal that ruling, causing a second very considerable delay (approximately eighteen
4 months on average for each appeal, for a total of thirty-six months) in the enforcement of the
5 Judgment. In contrast, if the Court rules immediately on the Watermaster Motion, any appeal of
6 that order by the Zamrzlas can be consolidated with the Zamrzlas' current appeal of the Order,
7 which has not yet progressed to the briefing stage. The court of appeal could then review both
8 rulings at the same time, which would be more economical and would save considerable time.

9 Given the absence of any harm to the Zamrzlas, and the very considerable probability that
10 granting the stay would delay enforcement of the Judgment to the harm of the Watermaster and
11 the Basin, the Court should not impose a discretionary stay.

12 **III. THE AMOUNT OF RWAs SOUGHT IN THE MOTION IS UNDISPUTED**

13 Although the Zamrzlas dispute that they are liable for monetary damages and subject to
14 injunctive relief—an argument inherent in the legal theories rejected by this Court in the Order—
15 they have never disputed their self-reported production numbers dated March 18, 2019, submitted
16 to the Watermaster via their attorney, true and correct copies of which are set forth in Exhibit A to
17 the declarations of Patricia Rose and Craig A. Parton in support of the Watermaster Motion (the
18 “**Production Reports**”)(see Declaration of Craig A. Parton at 1:9-15, dated September 29, 2021).

19 In their Opposition the Zamrzlas carefully sidestep the issue to avoid admitting that the
20 amounts set forth in the Production Reports are incorrect. (*See* Opposition at 2:25 – 3:1 (alleging
21 that “the amounts claimed by the Watermaster are not correct” but only because “[t]he Zamrzlas
22 dispute the Watermaster’s claim to interest and attorneys’ fees” and “[t]here has not been an
23 evidentiary hearing on the Watermaster’s motion and as to the amount of water the Zamrzlas’ are
24 allowed to produce”); *see also* Opposition at 5:26 – 6:2 (claiming that “the damages sought against
25 the Zamrzlas have not been litigated,” and “[t]he Zamrzlas dispute the injunctive relief and
26 monetary damages sought against them,” but only because “the issue as to the Zamrzlas’ production
27 rights and the quantity of water they may be allowed to produce under the Judgment was to be
28 deferred to a later hearing.”).)

1 The Zamrzlas are over-complicating a straightforward matter. If the appeal of the Order is
2 unsuccessful, then the Zamrzlas are conclusively members of the Small Pumper Class under the
3 Judgment, entitled to produce only up to 3 acre-feet per year without payment of RWAs. (Judgment
4 at 5.1.3.) In that case there are no further legal or factual questions to be resolved as to the
5 Zamrzlas' production rights or the quantity of water they may be allowed to produce. The facts and
6 the law as applied to those issues are clearly set forth in the Judgment.¹

7 Yet the Zamrzlas inexplicably fixate on the need to engage in discovery, designate experts
8 and/or present expert testimony, none of which will be necessary if the appeal of the Order is
9 denied, in which case they will indisputably owe RWAs for the amounts they admit they produced
10 in 2018 as set forth in the Production Reports. The calculation of the RWAs due for 2018, and the
11 interest thereon, are likewise indisputable and easily calculable based on the RWA rates for 2018.

12 **IV. THE WATERMASTER HAS PROPERLY SOUGHT ATTORNEYS' FEES**

13 The Watermaster has complied with the process necessary to collect its reasonable
14 attorneys' fees. Paragraph 18.4.12 of the Judgment and Section 19.g of the Watermaster's Court-
15 approved Rules and Regulations explicitly authorize recovery of attorneys' fees incurred in the
16 Watermaster's efforts to collect RWAs.

17 Specifically, the Judgment provides that "delinquent assessment[s], *together with* interest
18 thereon, costs of suit, attorneys fees and reasonable costs of collection, may be collected pursuant
19 to ... motion by the Watermaster giving notice to the delinquent Party only..." (Judgment at
20 18.4.12 (emphasis added).) Clearly the Court has authorized the Watermaster to seek its
21 reasonable costs and attorneys' fees incurred in collecting RWAs *as part of* a noticed motion to
22 collect delinquent RWAs. The judicial efficiency of allowing the Watermaster to collect its
23 reasonable costs and fees concurrently with a motion to collect delinquent RWAs makes sense,
24 given that the Watermaster's RWA collection efforts are an essential component of the

25
26
27 ¹ Admittedly, if the Zamrzlas' appeal of the Order is successful, then the issue of the Zamrzlas
28 production rights and the amount of water they are allowed to produce may come back into play
and necessitate further discovery, designation of experts and testimony. However ruling on the
Watermaster Motion now, with the Watermaster's agreement not to enforce the monetary
component of the order during the pendency of the appeal, does not preclude that possible outcome.

1 Watermaster's enforcement duties to protect the Basin under the Judgment.

2 The Watermaster followed the prescribed procedure by filing the Watermaster Motion and
3 providing notice to the Zamrzlas. The attorneys' fees incurred by the Watermaster in seeking to
4 collect the delinquent RWAs from the Zamrzlas have grown exponentially, due to the Zamrzlas'
5 repeated efforts to thwart the Watermaster and deny their obligations under the Judgment. When
6 the Watermaster renewed the Watermaster Motion on October 11, 2023, it gave the Zamrzlas
7 notice and an opportunity to object to the increased fees at hearing, in full compliance with the
8 procedures set forth in Paragraph 18.4.12 of the Judgment and the Watermaster Rules and
9 Regulations. The declaration of Craig A. Parton, Watermaster General Counsel, filed on October
10 11, 2023, sets forth the basis for the amount of the increased attorneys' fees sought herein.


11 **V. CONCLUSION**

12 For the foregoing reasons, the Court should award the monetary, declaratory and
13 injunctive relief requested in the Watermaster Motion, acknowledging that the Watermaster will
14 not enforce the monetary component of the order pending the appeal of the Order.

15 Respectfully submitted,

16 Dated: November 9, 2023

PRICE, POSTEL & PARMA LLP

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22 Attorneys for
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PROOF OF SERVICE


STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

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

On November 9, 2023, I served the foregoing document described **WATERMASTER’S REPLY TO ZAMRZLAS’ OPPOSITION TO RENEWED MOTION FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF** on all interested parties in this action by placing the original and/or true copy.

- BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa Clara County Superior Court Website @ www.scefilng.org and Glotrans website in the action of the Antelope Valley Groundwater Cases.
- (*STATE*) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (*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.

Executed on November 9, 2023, at Santa Barbara, California.



Signature
Elizabeth Wright