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

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

Judicial Council Coordination
Proceeding No. 4408

LASC Case No.: BC 325201

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

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

15
16
17
18 **AND ALL RELATED ACTIONS**
19

**ANTELOPE VALLEY
WATERMASTER'S OPPOSITION TO
PHELAN PIÑON HILLS COMMUNITY
SERVICES DISTRICT'S MOTION FOR
DECLARATORY RELIEF RE
WATERMASTER RESOLUTION NO. R-
19-27 AND NOTICE OF ASSESSMENT
OF REPLACEMENT WATER
ASSESSMENTS FOR 2016, 2017 AND
2018; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
MATTHEW KNUDSON AND PATRICIA
ROSE; EXHIBITS 1-15**

*[Declarations of Matthew Knudson and
Patricia Rose filed concurrently herewith]*

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24 Date: November 7, 2019
25 Time: 9:00 a.m.
26 Dept: Courtcall
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TABLE OF CONTENTS

Page

I. INTRODUCTION4

II. STATEMENT OF FACTS5

 A. Phelan’s RWA Obligations.....5

 B. The 2018 Order6

 C. Watermaster Adoption Of RWA Rates.....7

 D. The Invoicing8

III. ARGUMENT8

 A. The RWA Rates are Supported By Substantial Evidence8

 B. Rules And Regulations Are Not Required To Impose And Collect RWAs14

 C. The Invoicing Irregularities Do Not Render The Invoice Invalid16

 D. The 2016 And 2017 RWAs Are Enforceable Pending The Outcome Of
 Phelan’s Appeal Of The 2018 Order17

IV. CONCLUSION.....18

TABLE OF AUTHORITIES

	<u>PAGE</u>
Cases	
<i>Ctr. for Biological Diversity v. Cty. of San Bernardino</i> (2010) 185 Cal. App. 4th 866, 881	9
<i>Paramount Pictures Corp. v. Davis</i> (1964) 228 Cal.App.2d 827, 835	17
<i>People v. Mobile Magic Sales, Inc.</i> (1979) 96 Cal.App.3d 1, 13	18
<i>Sun-Maid Raisin Growers of Cal. v. Paul</i> (1964) 229 Cal.App.2d 368, 374	17
<i>Telish v. State Pers. Bd.</i> (2015) 234 Cal. App. 4th 1479, 1487	9
<i>United Railroads of San Francisco v. Superior Court</i> (1916) 172 Cal. 80, 84	18
<i>United Railroads</i> , 172 Cal. 80, 88-89	18
State Cases	
Watermaster Resolution No. R-18-04	6
Watermaster Resolution No. R-18-08	7
Watermaster Resolution No. R-19-11	7
Watermaster Resolution No. R-19-20	15
Watermaster Resolution No. R-19-27	4, 7, 9, 14
Watermaster Resolutions No. R-19-10	7

1 The Antelope Valley Watermaster (“Watermaster”) opposes Phelan Piñon Hills
2 Community Services District’s (“Phelan”) Motion for Declaratory Relief Re Watermaster
3 Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016,
4 2017 and 2018 (the “Motion”) as follows:

5 **I. INTRODUCTION**

6 The Watermaster is charged with administering the December 23, 2015 Judgment and
7 Physical Solution in the above-captioned action (the “Judgment”).¹ The Watermaster’s duties
8 under the Judgment include, among other responsibilities, the levying and collection of
9 Replacement Water Assessments (“RWA(s)”). In the Motion, Phelan seeks to invalidate the
10 Watermaster invoice charging Phelan a total of \$1,191,063.34 in RWAs for 2016, 2017, and
11 2018. Phelan argues that the RWA rates in the invoice are unsupported by substantial evidence,
12 that the Watermaster cannot levy and collect RWAs without first adopting rules and regulations
13 applicable thereto, and that the invoice is invalid because the dates on the invoice pre-date the
14 Watermaster’s adoption of the relevant RWA rates. Phelan also insists that the Watermaster
15 cannot collect RWAs for 2016 or 2017 while Phelan’s appeal of this Court’s April 26, 2018 Order
16 (the “2018 Order,” a true and correct copy of which is attached hereto as Exhibit “15”) is pending.

17 The Watermaster has worked cooperatively with the Antelope Valley State Water
18 Contractors Association (“AVSWCA”) and its constituent members (Antelope Valley – East Kern
19 Water Agency (“AVEK”), Littlerock Creek Irrigation District (“LCID”), and Palmdale Water
20 District (“PWD”)) to establish the applicable RWA rates using the evidence and analysis set forth
21 in the Financial Analysis Study for Replacement Water Assessment Final Report dated March 6,
22 2019 (the “Raftelis Report,” a true and correct copy of which is attached to the Declaration of
23 Matthew Knudson as Exhibit “8”). As discussed in this opposition, the Raftelis Report provides
24 more than substantial evidence to support the Watermaster-approved RWA rates. Phelan’s
25 arguments to the contrary are rooted in Phelan’s fundamental misunderstanding of the terms of
26 the Judgment and of the analysis found in the Raftelis Report.

27 _____
28 ¹ All capitalized terms included in this Opposition not otherwise defined herein shall have the same
meaning as set forth in the Judgment.

1 Furthermore, nothing in the Judgment preconditions the levy and collection of RWAs
2 upon Watermaster adoption of rules and regulations therefor. Whether or not the Watermaster has
3 formally adopted any such rules and regulations has no bearing on the enforceability of the RWAs
4 or the invoice. Likewise, the “irregularities” in the invoice sent to Phelan relate only to
5 inconsistencies in non-substantive dates. These inconsistencies are the result of ministerial error,
6 and do not impact the enforceability of the RWAs or the invoice.

7 Finally, the 2018 Order is not a money judgment, and contrary to Phelan’s arguments,
8 enforcement of the 2016 and 2017 RWAs is not tantamount to requiring Phelan to post a bond
9 pending the outcome of its appeal. Rather, Phelan’s ongoing failure to pay past-due RWAs is in
10 violation of the prohibitory injunction against export of Groundwater from the Basin. The
11 prohibitory injunction does not apply to Phelan “so long as” it pays RWAs, and it is not stayed
12 pending appeal.

13 For these reasons Phelan’s Motion must be denied in its entirety.

14 **II. STATEMENT OF FACTS**

15 **A. Phelan’s RWA Obligations**

16 The Watermaster is charged with levying and collecting RWAs for the purpose of paying
17 all costs related to Replacement Water. (Judgment ¶¶ 3.5.41, 9.2.) “To the extent that Production
18 by a Producer exceeds such Producer’s right to Produce a portion of the Total Safe Yield as
19 provided in this Judgment, the Producer will pay a [RWA] to the Watermaster and the
20 Watermaster will provide Replacement Water to replace such excess production according to the
21 methods set forth in this Judgment.” (*Id.* ¶ 7.3.) “The amount of the [RWA] shall be the amount
22 of such excess Production multiplied by the cost to the Watermaster of Replacement Water,
23 including any Watermaster spreading costs.” (*Id.* ¶ 9.2.) The RWA rate is expressed in dollars per
24 acre-foot, and is multiplied by the Replacement Obligation (in acre-feet) to determine a Party’s
25 total RWA.

26 The Judgment makes clear that the Watermaster has the authority to levy and collect
27 RWAs from Phelan. As set forth in the 2018 Order, Phelan has no Production Right or Imported
28 Water Return Flow Rights, and its only right to use Groundwater in the Basin is set forth in

1 Paragraph 6.4.1.2 of the Judgment. (Exh. 15 at 3:15-16 (“Phelan has neither appropriative nor
2 prescriptive rights to pump or produce ground water in the adjudication area.”).) Therefore any
3 Groundwater use by Phelan is “in excess of the sum of [Phelan’s] Production Right and Imported
4 Water Return Flow,” and Phelan must pay RWA on all Groundwater it pumps from the Basin.
5 (*Id.* at 5:21-22 (Phelan “has no right to produce water from the aquifer without paying for
6 replacement water.”).) The Watermaster is therefore explicitly authorized and required to impose
7 RWAs on Phelan for all Groundwater it uses. (*Id.* at 6:1-3 (Phelan “must . . . pay for all water
8 pumped out of the adjudication area so that the water taken can be replaced by imported water.”).)

9 Although Phelan is subject to the injunction against transportation of Basin Groundwater
10 for use outside the Basin (Judgment ¶ 6.4.), the injunction does not apply to Phelan so long as its
11 total Groundwater usage does not exceed 1,200 acre-feet per year, and so long as Phelan “pays
12 [RWA] pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect
13 Production Rights decreed herein, on all water Produced and exported in this manner.” (*Id.* ¶
14 6.4.1.2.) Therefore Phelan is automatically subject to the injunction against transportation of
15 Groundwater for use outside the Basin unless Phelan pays RWAs for all Groundwater it uses.

16 **B. The 2018 Order**

17 On January 24, 2018, the Watermaster adopted Resolution No. R-18-04, instructing staff
18 to impose RWAs for Groundwater pumped by Phelan in 2016 and 2017. (Knudson Decl. ¶ 4,
19 Exh. 1 & 2.) Thereafter, Phelan filed a motion seeking a declaration that it is entitled to the
20 benefits of Paragraph 8.3 of the Judgment, and therefore is not required to pay RWAs during the
21 Rampdown Period (*i.e.*, for 2016 and 2017). The Watermaster and the Public Water Suppliers
22 filed opposition, and the Court denied Phelan’s motion on April 26, 2018. In its 2018 Order, the
23 Court found that Phelan has neither appropriative nor prescriptive rights to Produce Groundwater
24 in the Basin, and therefore has no Production Right. Because Phelan’s only right to Groundwater
25 in the Basin is set forth in Paragraph 6.4.1.2, which requires Phelan to pay for all Groundwater it
26 uses, the Court concluded that Phelan has no Rampdown rights under Paragraph 8.3, and
27 therefore must pay RWA during the Rampdown Period. On May 17, 2018, Phelan filed an appeal
28 of the 2018 Order, which appeal is still pending.

1 **C. Watermaster Adoption Of RWA Rates**

2 At its February 28, 2018 meeting, the Watermaster Board considered and approved
3 Resolution No. R-18-08, setting the 2018 RWA rate for Parties within the AVEK service area. It
4 was noted at the meeting that the established RWA rate would apply only within the AVEK
5 service area, and that the 2018 RWA rate for Parties within the PWD and LCID service areas
6 would be established at a later date. (Knudson Decl. ¶ 5, Exh 3 & 4.)

7 At its July 19, 2018 meeting, the AVSWCA Board of Commissioners considered approval
8 of a professional services agreement with Raftelis Financial Consultants, Inc. (“Raftelis”) for the
9 purpose of eventually generating the Raftelis Report. (Knudson Decl. ¶ 6, Exh. 5.) The Raftelis
10 professional services agreement was approved by the AVSWCA Board and executed by the
11 parties effective August 1, 2018. (Knudson Decl. ¶ 7, Exh. 6.) Thereafter, AVSWCA constituent
12 member staff met with Raftelis to review the scope of work and provide documentation and
13 information necessary for preparation of the Raftelis Report. (Knudson Decl. ¶ 8.)

14 On March 14, 2019, the AVSWCA Board of Commissioners reviewed and considered a
15 draft of the Raftelis Report, and determined that the draft should be presented to the governing
16 bodies of each of the AVSWCA constituent members for review and approval. (Knudson Decl. ¶
17 9, Exh. 7.) Thereafter, the governing bodies of each of the AVSWCA constituent members
18 reviewed and approved the draft Raftelis Report, which was finalized effective March 6, 2019.
19 (Knudson Decl. ¶ 10, Exh. 8.)

20 At its April 24, 2019 meeting, the Watermaster Board considered and adopted Resolutions
21 Nos. R-19-10 and R-19-11, setting the 2018 RWA rate for Parties within the PWD and LCID
22 service areas, and the 2019 RWA rate for Parties within and outside the AVSWCA boundaries. A
23 copy of the Raftelis Report was attached to the Watermaster staff report for Resolutions Nos. R-
24 19-10 and R-19-11. (Knudson Decl. ¶ 11, Exh. 9 & 10.)

25 At its August 28, 2019 meeting, the Watermaster Board considered and adopted
26 Resolution No. R-19-27, setting the 2016 and 2017 RWA rate for Parties within and outside the
27 AVSWCA boundaries, and the 2018 RWA rate for Parties outside the AVSWCA boundaries. The
28 Watermaster staff report for Resolution No. R-19-27 referred to the Raftelis Report as the basis

1 for the RWA rate structure. (Knudson Decl. ¶ 12, Exh 11 & 12.)

2 **D. The Invoicing**

3 Beginning on or about July 10, 2019, Watermaster staff began drafting invoices for
4 collecting 2016, 2017, and/or 2018 RWAs. Template invoices were prepared with blanks in the
5 columns for yearly total acre-feet, RWA rate, and RWA amount, as well as the total amount due.
6 These template invoices were dated July 15, 2019, with a due date of August 14, 2019, and saved
7 in the Watermaster files for later completion after Watermaster Board approval of the applicable
8 RWAs. Watermaster staff began drafting these invoices in July 2019 in anticipation of a staff
9 member's planned leave in August, and in order to ensure invoices could be efficiently and
10 expeditiously finalized upon Watermaster Board approval of the applicable RWAs. (Rose Decl. ¶
11 3.)

12 On or about September 3, 2019, after Watermaster Board approval of the RWAs
13 applicable to Phelan, Watermaster staff entered the yearly total acre-feet, applicable RWA rate,
14 and final RWA amount, as well as the total amount due, into the template invoice for Phelan.
15 Watermaster staff then mailed the final invoice to Phelan on September 5, 2019, but without
16 updating the invoicing date of July 15, 2019 or the due date of August 14, 2019. (Rose Decl. ¶ 4,
17 Exh. 13.)

18 On or about September 13, 2019, a Phelan representative contacted the Watermaster to
19 point out that the invoice erroneously stated Phelan's total acre-feet for 2018 as 385.18, when
20 Phelan's Groundwater usage in 2018 was actually 176.83 acre-feet. On or about September 26,
21 2019, Watermaster staff updated and re-sent the invoice to Phelan, again failing to update the July
22 15, 2019 invoicing date or the August 14, 2019 due date. (Rose Decl. ¶ 5, Exh. 14.) The
23 Watermaster received no further correspondence from Phelan regarding the RWA invoice until
24 the filing of this Motion. (Rose Decl. ¶ 6.)

25 **III. ARGUMENT**

26 **A. The RWA Rates are Supported By Substantial Evidence**

27 Although judicial review of a Watermaster decision is *de novo* (Judgment ¶ 20.3.4),
28 Phelan suggests that the "substantial evidence" test is the applicable standard of review for

1 determining the enforceability of the 2016, 2017, and 2018 RWAs. When weighing the evidence
2 in the record in order to determine whether a decision is supported by substantial evidence, the
3 Court must indulge all presumptions, and resolve all conflicts, in favor of the agency's decision.
4 (*Telish v. State Pers. Bd.* (2015) 234 Cal.App.4th 1479, 1487.) "In determining whether
5 substantial evidence supports a finding, the court may not reconsider or reevaluate the evidence
6 presented to the administrative agency." (*Ctr. for Biological Diversity v. Cty. of San Bernardino*
7 (2010) 185 Cal. App. 4th 866, 881 (internal quotes omitted).) Regardless of the standard of
8 review, the evidence in the record—the Raftelis Report—clearly supports the Watermaster's
9 decision to adopt the 2016, 2017, and 2018 RWAs for Parties outside the AVSWCA boundaries.
10 Phelan's argument that there is no substantial evidence to support the RWAs relies entirely on an
11 incorrect interpretation of the Judgment and the analysis found in the Raftelis Report.

12 While the Watermaster is responsible under the Judgment to accomplish recharge of
13 Replacement Water, it does not have contracts for Imported Water supplies, and it does not have
14 facilities for recharge of Imported Water. Therefore the Watermaster must work with entities that
15 have contracts for Imported Water and/or recharge facilities—*i.e.*, AVSWCA's constituent
16 members, each of whom has a contract with the California Department of Water Resources
17 ("DWR") for entitlement to and delivery of Imported Water from the State Water Project
18 ("SWP"). (Judgment ¶ 9.2 (all RWAs "collected by the Watermaster shall be used to acquire
19 Imported Water from AVEK, [LCID], [PWD], or other entities."))²

20 AVSWCA contracted the Raftelis Report in recognition of the fact that SWP water is a
21 critical source of Replacement Water, and that AVSWCA costs of acquiring and recharging
22 Replacement Water would be an important factor in determining RWAs. The AVSWCA also
23 recognized that the Watermaster will need to acquire and recharge Replacement Water for Parties
24 outside the ACSWCA service area, which is not covered by the AVSWCA constituent members'

25
26 ² Note that Parties have options other than payment of RWAs to address their Replacement
27 Obligation. The RWAs based on the Raftelis Report reflect the amount required by the State Water
28 Contractors to obtain and recharge imported water to meet Replacement Water Obligations,
without any "markup" or "profit" for the Watermaster. Parties are free to address their
Replacement Obligations in other ways if they choose, including purchases from willing sellers of
Carry Over or Stored Water, or Production Rights or Imported Water Return Flow rights.

1 existing rates. (Knudson Decl. ¶ 12, Exh. 12.) Therefore the Raftelis Report was prepared in order
2 “to conduct financial analyses necessary to develop the proposed [RWAs] for [Parties outside the
3 AVSWCA boundaries] related to AVSWCA’s groundwater recharge activities.” (Knudson Decl.
4 Exh. 8 (Raftelis Report p. 1).) The Raftelis Report details the analysis performed to generate the
5 RWA rates, including appendices with DWR data for each AVSWCA constituent member, and
6 provides results and recommendations based on the data analysis.

7 AVSWCA’s constituent members collect revenues for both: (1) variable costs recovered
8 through charges for water deliveries on a cost per acre-foot basis; and (2) fixed costs that are
9 independent of the amount of SWP water delivered to specific users that are recovered through
10 property taxes on lands within the AVSWCA boundaries. The Raftelis Report identifies the total
11 costs of SWP water, and expresses it as a cost per acre-foot. Parties within the AVSWCA
12 boundaries already contribute to payment of SWP fixed costs through property taxes, so that
13 RWA rates for those Parties can be determined simply as the existing variable charges for the
14 amount of water actually delivered. (Knudson Decl. Exh. 8 (Raftelis Report p. 2).)

15 The RWA rate for Parties outside of the AVSWCA boundaries, however, includes an
16 additional fixed cost component to make the RWA rate equitable to the rates for Parties within the
17 AVSWCA boundaries (who already pay a portion of the cost of Imported Water through property
18 taxes). (Knudson Decl. Exh. 8 (Raftelis Report p. 1) (“[I]t is reasonable and equitable for the
19 [Parties outside the AVSWCA boundaries] to pay a [RWA] based in part on the investments of
20 the [AVSWCA constituent] members.”).) The methodology used to determine the fixed cost
21 component for Parties outside of the AVSWCA boundaries is outlined in step 1 of the Raftelis
22 Report as follows:

23 **1(a):** The total present value of SWP fixed costs through year 2017 for each of the
24 AVSWCA’s constituent members were estimated based on information contained
25 in their water supply contracts with DWR, using an average cost escalation factor
of 3.9% per year.

26 **1(b):** The total present value is divided by the total SWP deliveries in acre-feet through
year 2017.

27 This methodology evaluates the fixed cost amounts paid by those Parties within the AVSWCA
28 boundaries through property taxes, and estimates an equivalent cost per acre-foot to be collected

1 from Parties that incur Replacement Obligations based on Production outside of the AVSWCA
2 boundaries. (Knudson Decl. Exh. 8 (Raftelis Report p. 2).)

3 Phelan argues “there is no substantial evidence establishing that the RWA rates in fact
4 represent all [costs incurred by the Watermaster related to Replacement Water].” (Motion at
5 12:10-11.) However the Raftelis Report provides information on the appropriate purchase price
6 for Imported Water for those outside of the AVSWCA boundaries, and adjusts the variable cost
7 “to account for 10% water loss due to leakage” that could apply to the recharge process.
8 (Knudson Decl. Exh. 8 (Raftelis Report p. 2).) Phelan does not explain what costs are alleged to
9 be missing from the Raftelis Report, and later, without any supporting evidence, argues that the
10 RWAs may need to be lower. (Motion at 13:1-5.) These conclusory allegations do not
11 demonstrate a lack of substantial evidence supporting the Watermaster-approved RWAs.

12 Phelan further asserts that there is “no substantial evidence explaining why some Parties
13 receive significantly lower rates than those demanded of Phelan.” (Motion at 12:11-12.) This
14 ignores the stated purpose of the Raftelis Report: to “develop the proposed [RWAs] for” Parties
15 outside the AVSWCA boundaries, in order to reflect that those Parties need to pay their fair share
16 of the fixed costs associated with SWP water. (Knudson Decl. Exh. 8 (Raftelis Report p. 1).)

17 Phelan also asserts there is no substantial evidence to support the finding that the RWA
18 rate for Parties outside of the AVSWCA boundaries are based on the actual cost of Replacement
19 Water. To the contrary, the Raftelis Report explains that analysis of the appropriate RWA rate for
20 Parties outside of the AVSWCA boundaries must reflect an equitable share of the fixed costs for
21 SWP water because those Parties do not pay for fixed costs through property taxes. (Knudson
22 Decl. Exh. 8 (Raftelis Report p. 2, steps 1(a) and 1(b)).) The RWA rate identified in the Raftelis
23 Report therefore accurately reflects the cost of Imported Water to the AVSWCA.

24 Phelan characterizes the objective of the Raftelis Report as both: (1) “to justify recovery
25 of costs incurred by the AVSWCA rather than the Watermaster,” (Motion at 12:21-22); and (2)
26 “to generate a revenue stream for the AVSWCA rather than recover the Watermaster’s costs.”
27 (Motion at 13:5-6.) While it is true that the suggested RWA rates in the Raftelis Report are based
28 on providing sufficient revenues for AVSWCA to deliver and recharge Imported Water as

1 required for Replacement Water by the Watermaster, it is misleading for Phelan to imply that the
2 RWA rate in the Raftelis Report does not reflect costs that the Watermaster would incur for
3 Replacement Water. Rather than relying on Phelan's disingenuous characterization of what the
4 objective or purpose of the Raftelis Report "appears to be," the Court should instead look at the
5 plain language of the Raftelis Report's stated objectives:

- 6 • "The primary objective of the study was to perform a financial analysis of the imported
7 water costs associated with AVSWCA's groundwater basin recharge, and to develop
8 [RWA] fees to be assessed to property owners or agencies outside of AVSWCA's service
9 area." (Knudson Decl. Exh. 8 (Raftelis Report transmittal letter dated March 6, 2019).)
- 10 • "The primary objective of the Study was to conduct financial analysis necessary to
11 develop the proposed [RWA] for Outside Users related to AVSWCA's groundwater
12 recharge activities." (Knudson Decl. Exh. 8 (Raftelis Report p. 1).)

11 The evidence in the Raftelis Report therefore supports the RWA rates through an objective, fact-
12 driven analysis of the actual costs of acquiring and recharging Replacement Water which
13 comports with the needs and responsibilities of the Watermaster under the Judgment.

14 Phelan also expresses confusion about the escalation of past financial values to 2018
15 dollars, noting the use of "an average cost escalation factor of 3.9 percent which is purported [to
16 be] equal to the average annual increase in the Consumer Price Index between 1962 and 2017,"
17 but that the Raftelis Report did not disclose "which Consumer Price Index was used for this
18 calculation." (Motion at 12:24-28). In its April 23, 2019 and August 26, 2019 comment letters to
19 the Watermaster Engineer, Phelan indicated that it "attempted to replicate the process by which
20 the capital costs were inflated to 2017 or 2018 dollars and have been unable to confirm the
21 accuracy of the calculation." (Motion, Exh. 9 & 12.) Phelan provides no documentation in its
22 comment letters or the Motion indicating how it attempted to replicate the average CPI escalation
23 rate. However, a simple internet search of CPI data reveals the average annual CPI from 1962
24 (30.2) to 2017 (245.12) is computed to equal 3.88%,³ which if rounded to the nearest tenth equals
25 3.9%. Sudhir Pardiwala, the author of the Raftelis Report, confirmed that Raftelis used the data
26 from the CPI-All Urban Consumers (Current Series) for Los Angeles to make this calculation. It
27

28 ³ <https://cpiinflationcalculator.com/>

1 is unclear whether Phelan is concerned about this minimal rounding or some other calculation, but
2 Phelan's concerns clearly have no bearing on whether the RWA calculations are supported by
3 substantial evidence.

4 Phelan states that the Raftelis Report "centers around recovery of various costs, including
5 but not limited to, capital costs inflated to current values, incurred by the members of the State
6 Water Project, since the inception of the State Water Project," and that "[t]he original cost of
7 construction of the State Water Project in 1962 has been inflated from its original dollar amounts
8 to supposedly 2018 values . . ." (Motion at 12:22-26.) This description roughly correlates to step
9 1(a) in the Raftelis Report for the computation of the present value of SWP fixed costs of
10 AVSWCA constituent members through 2017, although the Raftelis Report estimates the "present
11 value of fixed costs through 2017," which is different from "the original cost of construction of
12 the State Water Project in 1962." (Knudson Decl. Exh. 8 (Raftelis Report p. 2).) For some reason
13 Phelan ignores step 1(b) of the Raftelis Report computation, in which the total present value is
14 divided by the total SWP deliveries to generate a fixed cost per acre-foot. (*Ibid.*) Phelan's failure
15 to consider the additional step in 1(b) to compute a SWP fixed cost per acre-foot indicates a
16 fundamental misunderstanding of the methodology in the Raftelis Report. Nothing in Phelan's
17 description suggests a lack of substantial evidence supporting the RWA rates.

18 Phelan further implies that the Raftelis Report should consider whether historical costs
19 have already been recouped from other sources "such that the RWA rates should be lower, or
20 perhaps should not include a component for these capital costs at all." (Motion at 13:1-5.)
21 Whether historical costs have been recovered (and the sources of such recovery) is irrelevant to
22 setting RWA rates that will apply to Replacement Obligations incurred in the future. RWAs are
23 intended to pay for future purchases of Imported Water and are not related to recouping past
24 costs. Furthermore, fixed costs will continue to be a component of the cost of purchase of
25 Imported Water, and therefore must continue to be included in the RWA rate calculation. Finally,
26 fixed costs should be equitably shared by those inside and outside of the AVSWCA boundaries.
27 Phelan's concerns are therefore unrelated to evaluating whether the RWA rate is supported by
28 substantial evidence.

1 Phelan also argues that the RWA rate must be based on costs already incurred by the
2 Watermaster, implying that estimation of the RWA rate before costs are actually incurred does
3 not provide substantial evidence therefor. For example, Phelan argues that the Raftelis Report
4 fails to examine whether or how the costs presented relate to costs incurred by the Watermaster in
5 providing Replacement Water, and “[t]here is no evidence presented that the Watermaster has in
6 fact purchase[d] any Replacement Water, what costs it incurred to do so, and what spreading costs
7 the Watermaster has incurred.” (Motion at 13:7- 10, (emphasis added).) However the Judgment
8 clearly contemplates collection of RWAs prior to the purchase and recharge of the Replacement
9 Water.⁴ Replacement Water is defined as “Water purchased by the Watermaster or otherwise
10 provided to satisfy a Replacement Obligation” (Judgment ¶ 3.5.40), which makes clear the water
11 purchase precedes the satisfaction of the Replacement Obligation by using Replacement Water to
12 recharge the Basin. The Judgment also includes provisions to address a situation where, due to
13 cost increases, the RWAs may be “insufficient to purchase all Imported Water for which the
14 Assessments were made,” demonstrating that RWAs are collected before the purchase of
15 Replacement Water. (*Id.* ¶ 9.2.)

16 For these reasons, the data, analysis, and recommendations in the Raftelis Report clearly
17 provide more than substantial evidence to support the Watermaster-approved 2016, 2017, and
18 2018 RWAs for Parties outside the AVSWCA boundaries, as set forth in Resolution No. R-19-27.
19 Phelan’s arguments to the contrary are inapposite, and demonstrate Phelan’s lack of
20 understanding of the terms of the Judgment and of the analysis in the Raftelis Report.

21 **B. Rules And Regulations Are Not Required To Impose And Collect RWAs**

22 Phelan argues that because the Watermaster has not adopted rules and regulations for
23 levying and collecting RWAs, “the invoice must be invalidated, and the Watermaster must be
24 directed to adopt the necessary rules and regulations, procedures and schedules, before re-issuing
25 the invoice.” (Motion at 13:21-24). To the contrary, all assessments “shall be levied and collected
26

27
28 ⁴ The Watermaster could only buy Replacement Water before it receives RWAs if it borrows money under Judgment Paragraph 18.4.7, which is limited to “an amount not to exceed the annual amount of assessment.”

1 in accordance with the procedures and schedules determined by the Watermaster.” (Judgment ¶
2 18.4.12 (emphasis added).) Phelan incorrectly conflates the term “procedures and schedules” with
3 the term “rules and regulations.” Nothing in Paragraph 18.4.12 or anywhere else in the Judgment
4 indicates that Watermaster adoption of “rules and regulations,” a clearly defined term, is a
5 prerequisite to the levying and collection of RWAs.

6 The Judgment consistently identifies all instances in which rules and regulations must be
7 adopted prior to the Watermaster taking specific actions. (*See Id.* ¶¶ 9.2 (allocation of Imported
8 Water), 16.1 (when Transfers are permitted), 18.1.4 (AVEK performance of Watermaster staff
9 and administrative functions), 18.4.12 (definition of delinquent assessment), 18.5.5 (installation
10 of water meters), 18.5.12 (Production reports), 18.5.14 (Storage Agreements), and 18.5.17
11 (Annual Report public hearing).) Such rules and regulations must be prepared by the Watermaster
12 and proposed to the Court for adoption after a public hearing with 30 days’ advance notice. (*Id.* ¶
13 18.4.2.)

14 The levy and collection of assessments, on the other hand, must be done in accordance
15 with “procedures and schedules determined by the Watermaster.” (*Id.* ¶ 18.4.12.) The term
16 “procedures and schedules” is not used anywhere else in the Judgment, and clearly is not
17 analogous to “rules and regulations.” This is supported by the fact that the Watermaster may
18 unilaterally “determine” such procedures and schedules, as opposed to rules and regulations
19 which must be “adopted” and approved by the Court after public comment.

20 Watermaster Resolution No. R-19-20, attached as Exhibit 10 to the Motion, does not
21 support Phelan’s position. This resolution adopts a memorandum from the Watermaster General
22 Counsel recommending methods for collecting delinquent assessments, and directs that the
23 memorandum be incorporated into the Watermaster’s final set of rules and regulations which will
24 eventually be presented to the Court for approval. Nothing in the Judgment requires that RWA
25 levy and collection procedures be incorporated into rules and regulations prior to implementation.
26 Furthermore, while Resolution No. R-19-20 mentions rules and regulations, it is itself not
27 involved in the adoption of rules and regulations, and therefore is not governed by Section 18.4.2
28 and its hearing requirement and time frames.

1 Even assuming that the plain language of the Judgment could be construed to require the
2 Watermaster to adopt rules and regulations prior to collecting and levying RWAs, any such
3 requirement would constitute a mere formality, and Phelan's argument elevates form over
4 substance. The Watermaster is clearly authorized to levy and collect RWAs, and in fact is
5 obligated to do so in order to timely purchase Replacement Water and protect the health of the
6 Basin. A Court declaration that the Watermaster's hands are tied in enforcement of a key
7 component of the Judgment until finalizing unnecessary rules and regulations would improperly
8 delay a critical step in ensuring Replacement Obligations are timely satisfied.

9 **C. The Invoicing Irregularities Do Not Render The Invoice Invalid**

10 Phelan argues that the erroneous invoicing date and due date on the invoice require
11 invalidation of the invoice and the RWAs reflected therein. (Motion at 14:14-15.) Phelan goes so
12 far as to suggest that these ministerial dating errors demonstrate that "the RWA rates were
13 actually adopted in secret." (Motion at 14:4-5.)

14 Watermaster staff began drafting its RWA invoices in July 2019, ahead of the
15 Watermaster's final approval of the applicable RWA rates and in anticipation of a staff member's
16 planned leave in August 2019. As a result of the shifting of Watermaster staff member
17 responsibilities, the July invoicing date and August due date were erroneously carried over onto
18 the final invoices once the applicable RWAs were entered into the template invoices. This is not
19 supportive of Phelan's conspiracy theory, nor does it indicate that the Watermaster must adopt
20 rules and regulations prior to collecting RWAs. Rather these dating inconsistencies were harmless
21 ministerial errors which had no prejudicial effect on Phelan.

22 Furthermore, the RWA rates were adopted at a properly noticed public hearing after
23 receiving public comment from Phelan. (Motion at Exh. 12 (Phelan's August 26, 2019 comment
24 letter).) This was in no way a "secret" process.

25 While the Motion highlights that the number of acre-feet and assessment amount for 2018
26 were "the only changes made" to the invoice, this was the only item that Phelan brought to the
27 Watermaster's attention and requested to be updated. (Motion, Bartz Decl. ¶¶ 3-4.) If Phelan was
28 unclear about the due date for the purposes of the 10% late fee referenced in the invoice, it could

1 have contacted the Watermaster directly to request clarification. A motion for declaratory relief
2 was hardly necessary to rectify this harmless ministerial error.

3 **D. The 2016 And 2017 RWAs Are Enforceable Pending The Outcome Of Phelan's**
4 **Appeal Of The 2018 Order**

5 Phelan acknowledges that “the April 2018 Order that is the subject of a pending appeal by
6 Phelan was not a money judgment.” (Motion at 11:25-26 (emphasis added).) Nevertheless, Phelan
7 goes on to argue that as a government agency it cannot be required to post a bond or make a
8 deposit to avoid enforcement of a money judgment pending appeal (Motion at 11:14-24), which is
9 clearly an argument specific to judgments for money.

10 Phelan's position appears to be premised on the idea that the 2018 Order “paved the way
11 for the Watermaster's issuance of the invoice,” and therefore that the invoice “is, in effect,
12 seeking to enforce the April 2018 Order, or seeking a bond or deposit.” (Motion at 11:26, 12:1-2.)
13 Phelan fails to recognize that its obligation to pay RWA is elective and arises only if Phelan
14 wishes to avoid the prohibitory injunction against exporting Groundwater from the Basin.
15 (Judgment ¶ 6.4.1.2). The Judgment does not permit Phelan to invoke the exception to the
16 prohibitory injunction without paying RWAs. Having elected to pump Groundwater from the
17 Basin, Phelan is responsible for the RWAs imposed by the Watermaster. This is not analogous to
18 Phelan being required to post a bond pending the outcome of the appeal of a money judgment.
19 Phelan's payment of the RWA reflects a condition under the Judgment that Phelan accepted when
20 it chose to pump Groundwater for export from the Basin post-Judgment.

21 Phelan's obligation to comply with the injunction against pumping Groundwater for
22 export unless Phelan pays RWAs is not stayed by its appeal of the 2018 Order. While proceedings
23 on a mandatory injunction are automatically stayed by perfecting an appeal from the injunction, a
24 “prohibitory injunction is self-executing” and therefore is not automatically stayed by appeal.
25 (*Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374; *Paramount Pictures*
26 *Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835.) To ascertain whether an injunction is mandatory
27 or prohibitory, courts look not to the designation or form of the language in the judgment or order
28 imposing the injunction, but instead look to the terms and effect of the injunction. (*People v.*

1 *Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13; *United Railroads of San Francisco v.*
2 *Superior Court* (1916) 172 Cal. 80, 84.) Mandatory relief will “compel the performance of a
3 substantive act or a change in the relative positions of the parties,” whereas prohibitive relief
4 “seeks to restrain a party from a course of conduct or to halt a particular condition.” (*Mobile*
5 *Magic Sales*, 96 Cal.App.3d at 13.) “The character of prohibitory injunctive relief, . . . is not
6 changed to mandatory in nature merely because it incidentally requires performance of an
7 affirmative act.” (*Ibid.*, citing *United Railroads*, 172 Cal. 80, 88-89.) If an injunction commands
8 an affirmative action in order to prevent a party from engaging in a prohibited act, it is still
9 prohibitive in character and properly issued to halt a continuing violation. (*Ibid.*)

10 Here, the injunction prohibiting exports of Groundwater except as provided in the
11 Judgment is prohibitory in character as it halts continuing appropriation of Groundwater in the
12 overdrafted Basin. If Phelan wishes to continue pumping and exporting Groundwater, it must
13 render the injunction inapplicable to its exports by invoking the exception to the injunction, which
14 includes payment of RWAs. The injunction therefore is not stayed pending appeal, and Phelan is
15 obligated to pay RWAs for 2016, 2017 and 2018 forthwith.

16 **IV. CONCLUSION**

17 For the foregoing reasons, the Watermaster respectfully requests that Phelan’s Motion be
18 denied in its entirety.

19 Respectfully submitted,

20 Dated: October 25, 2019

PRICE, POSTEL & PARMA LLP


21
22 By: 
23 CRAIG A. PARTON
24 CAMERON GOODMAN
25 Attorneys for
26 Antelope Valley Watermaster
27
28

EXHIBIT 15

1 ALESHIRE & WYNDER, LLP
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6 Attorneys for Defendant and Cross-Complainant
Phelan Piñon Hills Community Services District
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
11

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

14 **ANTELOPE VALLEY
GROUNDWATER CASES**

15 Included Actions:

16 *Los Angeles County Waterworks District*
No. 40 v.
17 *Diamond Farming Co., et al.*
Los Angeles County Superior Court, Case
18 No. BC 325 201

19 *Los Angeles County Waterworks District*
No. 40 v.
20 *Diamond Farming Co., et al.*
Kern County Superior Court, Case No.
21 S-1500-CV-254-348

22 *Wm. Bolthouse Farms, Inc. v. City of*
23 *Lancaster*
Diamond Farming Co. v. City of Lancaster
24 *Diamond Farming Co. v. Palmdale Water*
Dist.
25 Riverside County Superior Court,
Consolidated Action, Case Nos. RIC 353
26 840, RIC 344 436, RIC 344 668

27 **AND RELATED CROSS-ACTIONS**
28

Case No. Judicial Council Coordination
Proceeding No. 4408

**NOTICE OF ENTRY OF ORDER AFTER
HEARINGS ON APRIL 18, 2018**

**[Motion by PPHCSD Requesting
Declaratory Relief Regarding
Watermaster's Resolution R-18-04, Finding
PPHCSD is Obligated to Pay Replacement
Water Assessment Notwithstanding First
Sentence of Judgment Section 8.3]**

Assigned for All Purposes to:
Hon. Jack Komar

ALESHIRE &
WYNDER, LLP
ATTORNEYS AT LAW



ALESHIRE &
WYNDER, LLP
ATTORNEYS AT LAW



1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 18, 2018, an Order was entered in the above entitled
3 Court. A true and correct copy of the Court's Order is attached hereto.

4 DATED: May 25, 2018

Respectfully submitted,

5 ALESHIRE & WYNDER, LLP
6 JUNE S. AILIN

7
8 By:

A handwritten signature in black ink, appearing to read 'June S. Ailin', written over a horizontal line.

9 JUNE S. AILIN

10 Attorneys for Defendant and Cross-Complainant
11 Phelan Piñon Hills Community Services District

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER HEARINGS ON
APRIL 18, 2018**

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

**Motion by PPHCSD Requesting
Declaratory Relief Regarding
Watermaster's Resolution R-18-04,
Finding PPHCSD's is Obligated to
Pay Replacement Water Assessment
Notwithstanding First Sentence of
Judgment Section 8.3.**

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judge: Honorable Jack Komar, Ret.

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

*Antelope Valley Groundwater Litigation (Consolidated Cases) (JCCP 4408)
Superior Court of California, County of Los Angeles, Lead Case No. BC 325 201
Order After Hearings on April 18, 2018*

1
2
3 The above-entitled matters came on regularly for hearing on April 18, 2018 at 9:00 a.m.
4 in the Superior Court of California, County of Los Angeles, Room 222, the Honorable Jack
5 Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read

6 and considered the supporting and opposing papers, and having heard and considered the
7 arguments of counsel, and good cause appearing therefore, makes the following order:

8 The subject of this coordinated matter is an adjudication of conflicting claims for water
9 in a drought impacted, severely overdrawn aquifer in the Antelope Valley. The adjudication as
10 a coordinated case commenced in 2005 and was completed by entry of judgment in December
11 2015.

12 The court adjudicated the respective water rights of the residents, property owners,
13 municipalities, public service districts, industries, farmers, and public and private water
14 producers, and approved and adopted a remedy (physical solution) to relieve the continuing
15 shortage of water within the basin.

16 A Judgment was signed by the court on December 23, 2015, based upon the court's
17 findings of fact and a stipulation among most but not all of the parties to the litigation. As an
18 integral part of the judgment, the court adopted a physical solution which most of the parties
19 stipulated to or supported and which the court independently adopted, thereby making it
20 binding on all the parties to the adjudication.

21 The judgment and physical solution established which parties have water rights in the
22 adjudication area, quantifying such rights where possible, and established a process to
23 eliminate the overdraft by which all parties having a right to pump water from the aquifer
24 (water producers) are required to reduce their pumping from the native yield over a period of
25 time and to pay a replacement water assessment for any water pumped which exceeds their
26 annual and ultimately their permanent entitlement.

27 The judgment provides for a seven year period commencing in 2016 within which to
28 bring the aquifer into balance so that annual water production does not exceed the native safe

1 yield of the aquifer. With a gradual reduction of pumping by all water producers, by the end of
2 the rampdown period, the total amount of pumping is expected to not exceed the annual
3 recharge, and to bring the aquifer into balance. The physical solution and Judgment
4 established the creation of a Watermaster to manage the physical solution.

5 The motion by Defendant/Cross Complainant Phelan Pinon Hills Community Services
6 District (hereinafter Phelan) seeks a declaration that it is entitled to the benefit of Paragraph 8.3
7 of the physical solution (all references to paragraphs are to the numbered paragraphs in the
8 physical solution) which provides that "during the first two years of the Rampdown Period, no
9 producer will be subject to a replacement water assessment. The motion is opposed by the
10 Watermaster and the Public Water Producers.

11 Phelan occupies a unique position as a party to this litigation. Phelan is a public entity,
12 a community service district, and is charged with, among other things, a duty to provide water
13 to its customers. It owns a single well in the Antelope Valley Adjudication area from which it
14 obtains some of the water used to service its customers. None of its customers reside in the
15 subject adjudication area. As is explained below, Phelan has neither appropriative nor
16 prescriptive rights to pump or produce ground water in the adjudication area.

17 Notwithstanding that it has no correlative water right, in view of the public good and
18 the public interest, the court deemed it equitable to permit Phelan the right to continue to pump
19 water and export it for use of its customers with quantity limits so long as it paid for the water
20 based upon its replacement cost and so long it was not causing damage to the aquifer. The
21 amount of water that Phelan can pump is capped at 1200 acre feet per year based on its
22 historical usage. See Paragraph 6.4.1.2. The essence of Phelan's theory is that because it pumps
23 water from the aquifer it is a producer, and that Paragraph 8.3 is unqualified in its description
24 of "producer." The Watermaster and the public water producers have opposed Phelan's
25 interpretation of the Paragraph 8.3.

26 While Phelan points to the express language of Paragraph 8.3, as the beginning and end
27 of the inquiry, it is necessary to look at the entirety of Paragraph 8 and all of its subparts (as
28 well as the entirety of the physical solution, including the entire rampdown process) to

1 evaluate Phelan's position. While the first sentence in Paragraph 8.3 does specifically
2 eliminate the replacement water assessment during the first two years of the rampdown period,
3 and in a vacuum might appear to support Phelan's argument, the second sentence makes clear
4 to whom the relief applies: "During years three through seven of the rampdown period, the
5 amount that each party may produce from the native safe yield will be progressively reduced as
6 necessary, in equal annual increments, from its Pre-rampdown production to its Production
7 right. . . any amount produced over the required production shall be subject to the
8 replacement water assessment." See Paragraph 9.2.

9 Parties with a prescriptive or other appropriative or "legacy" right¹ to produce water
10 from the native yield are described in Paragraph 5.1 et seq., and includes the small pumper
11 class, overlying producers, non-overlying producers (public water suppliers with prescriptive
12 rights) as well as the federal and state government entities. While Paragraph 3.5.30 defines a
13 producer as a party who produces groundwater, "produce" is defined as pumping that is for
14 reasonable and beneficial uses. Paragraph 3.5.29.

15 The issue requires interpretation of the judgment and the court approved physical
16 solution. All parties contend that the stipulation and judgment is clear on its face although they
17 arrive at different conclusions. No party has offered parol or extrinsic evidence to interpret the
18 stipulation or the judgment. However, in ascertaining the intent of the judgment and the
19 language used in its interpretation, it is necessary to consider the court's statements of
20 decisions, the evidence upon which the court based the approval of the physical solution, and
21 the entirety of the physical solution and the judgment.

22 The physical solution "requires quantifying the Producers' rights within the basin
23 which will reasonably allocate the Native Safe Yield..." Paragraph 7. Phelan was found to not
24 have any correlative or other rights to native yield. It acquired no prescriptive right,² made no
25 reasonable and beneficial use of any water on property from which it pumped water within
26 the adjudication area, and exported all water pumped from its single well out of the

27
28 ¹ Parties who protected their correlative rights by pumping water in the face of prescriptive claims.

² Phelan produced no evidence to support a prescriptive right and voluntarily dismissed a claim for prescription.

1 adjudication area for use of its customers in the Mojave Adjudication Area. See Partial
2 Statement of Decision of February 3, 2015. The aquifer was, and has long been, in severe
3 overdraft at the time that Phelan first commenced pumping from its well in 2005 in the
4 adjudication area r and it could not establish an appropriative right. There was no surplus of
5 ground water. Phelan's only right to pump is under the provisions of Paragraph 6.4.1.2. See
6 also Paragraph 3(f) of the Judgment itself.

7
8
9 As a party not having a right to a correlative share of the water in the aquifer, Phelan
10 also has no obligations or other burdens or role in the rampdown process or the rampdown
11 period. Consequently, because Phelan has no rampdown obligations, the provisions relieving a
12 producer of the obligation to pay a water replacement assessment for pumping over its reduced
13 pumping rights has no relevance or impact on Phelan. Only parties subject to the rampdown
14 are required to reduce the amount of water pumped over the rampdown period at their own cost
15 and to pay a replacement water assessment only if they pump more than their reduced right.

16 The Replacement Water Assessment as specified in Paragraph 9.2 is designed to ensure
17 that as the various producers water rights are reduced, water used above the reduced right will
18 result in an assessment to permit the Watermaster to replace that excess water with imported
19 water. Phelan has no water rights, is not obligated to engage in pumping reduction, and is
20 permitted to produce and pay for up to 1200-acre feet a year. The rampdown provisions do not
21 apply to Phelan which has no right to produce water from the aquifer without paying for
22 replacement water. It also has no rampdown obligations. If it uses water, it must pay for it.

23
24 Phelan is neither a stipulating nor a supporting party to the judgment. Paragraph 5.1.10
25 specifically provides that non-stipulating parties are subject to the judgment's terms but if such
26 party has any water rights as determined by the court, it is subject to reduction in production to
27 implement the physical solution, and the requirement to pay assessments, but shall not be
28 entitled to benefits provided by the stipulation. Here, the court found that Phelan was an

1 appropriator without any water rights, but accorded it a right to pump but that it must, in effect,
2 pay for all water pumped out of the adjudication area so that the water taken can be replaced by
3 imported water. Phelan's water pumping right is not based on a correlative right to water in the
4 aquifer.

5 Paragraph 6.4.1.2 in effect permits Phelan to pay for water to replace all water it pumps
6 out of the adjudication area so long as it nets out the water pumped by water to be replaced.
7 But that does not make Phelan a water producer of right from the native safe yield. The
8 specific language of 6.4.2.1 permits Phelan to pump "up to 1200 acre feet a year" so long as it
9 causes no material injury to the native safe yield and so long as it pays a water replacement
10 assessment so that the water it removes can be returned by purchased water acquired by the
11 Watermaster. Because Phelan has no right to pump water from the native yield without paying
12 for the same, it is not a water producer as defined in Paragraphs 5.1 et seq.

13 The parties seeking approval of the proposed physical solution and judgment offered
14 evidence to justify and support the proposal. The physical solution was dependent on that
15 evidence. The rights granted to Phelan were only to be a purchaser of water so that its use
16 could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as
17 either a plus or a minus- it was intended to have no net impact. If, as it requests, it is not
18 required to pay for water pumped during 2016 and 2017, its pumping would contribute to the
19 overdraft by pumping water to which it has no right.

20
21 The expert opinions were based on the provisions of the stipulation and court's various
22 trial phase statements of decision, subject to the specifics in the proposed judgment and the
23 stipulation. The testimony provided justification for the efficacy of the physical solution,
24 showing how the rampdown process would be able to bring the basin into balance within 7
25 years. The entirety of the statements of decision and the findings of the court upon which the
26 experts' opinions were based included findings that Phelan had no water rights (and because all
27 water pumped by it would be replaced by water purchased by water replacement assessments,
28 Phelan's water use was not subject to the rampdown provisions). Phelan received no burdens


1 (other than the water assessment) and would receive no benefits from the stipulation since it
2 had no reduction obligations and was neither a stipulating nor a supporting party to the
3 physical solution or the judgment.

4 **CONCLUSION**

5 The court concludes that Phelan is not entitled to the provisions of Paragraph 8.3. The
6 specification that "during the first two years of the Rampdown Period no *producer* shall be
7 subject to a Replacement Water Assessment . . ." (emphasis added) is not unqualified. It limits
8 the definition of "producers" to parties having a right to pump from the native yield but who
9 also have a duty to reduce pumping.

10 SO ORDERED.

11
12 Dated: April 26, 2018


13 Hon. Jack Komar (Ret.)
14 Judge of the Superior Court
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1 Judicial Council Coordination Proceeding No. 4408

2 **PROOF OF SERVICE**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I, Judy C. Carter,

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

7 On May 25, 2018, I served the within document(s) described as **NOTICE OF ENTRY OF**
8 **ORDER AFTER HEARINGS ON APRIL 18, 2018** on the interested parties in this action as
follows:

9 **BY ELECTRONIC SERVICE:** By posting the document(s) listed above to the Antelope
10 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.

11 **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package
12 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
13 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.

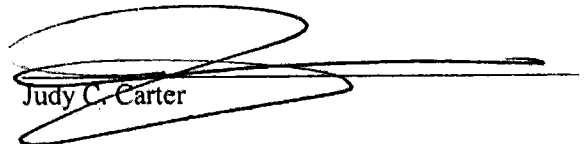
14 Craig Andrews Parton
15 Price Postel & Parma
200 E. Carrillo St., Suite 400
16 Santa Barbara, CA 93101
Tel: (805) 962-0011
17 (805) 965-3978

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

VIA OVERNIGHT MAIL

18
19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct.

21 Executed on May 25, 2018, at El Segundo, California.

22
23 
24 Judy C. Carter

25
26
27
28

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.

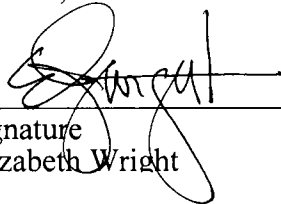
5 On October 25, 2019, I served the foregoing document described as **ANTELOPE**
6 **VALLEY WATERMASTER'S OPPOSITION TO PHELAN PIÑON HILLS**
7 **COMMUNITY SERVICES DISTRICT'S MOTION FOR DECLARATORY RELIEF RE**
8 **WATERMASTER RESOLUTION NO. R-19-27 AND NOTICE OF ASSESSMENT OF**
9 **REPLACEMENT WATER ASSESSMENTS FOR 2016, 2017 AND 2018;**
10 **MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF MATTHEW**
11 **KNUDSON AND PATRICIA ROSE; EXHIBITS 1-15** on all interested parties in this action by
the original and/or true copy thereof enclosed in sealed envelopes, addressed as follows:

12
13 ☒ **BY ELECTRONIC SERVICE:** I posted the document(s) listed above to the Santa
14 Clara County Superior Court Website @ www.scefiling.org and Glotrans website in the
action of the Antelope Valley Groundwater Cases.

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

16 ☐ **(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.

17 Executed on October 25, 2019, at Santa Barbara, California.

18 
19 _____
Signature
Elizabeth Wright