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

Attorneys for
Antelope Valley Watermaster

Exempt from Filing Fees
Government Code § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding, Special Title (Rule 1550(b))	Judicial Council Coordination Proceeding No. 4408
ANTELOPE VALLEY 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
	ANTELOPE VALLEY WATERMASTER'S MOTION FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF AGAINST PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT; DECLARATIONS OF CRAIG A. PARTON AND PATRICIA ROSE, EXHIBITS 1 - 13
AND ALL RELATED ACTIONS	Date: July 21, 2021 Time: 10:00 a.m. Dept: By Courtcall

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 21, 2021, at 10:00 a.m., or as soon thereafter as this matter may be heard by telephonic appearance via Courtcall, the Antelope Valley Watermaster ("**Watermaster**") will, and hereby does, move this Court for an order pursuant to Paragraph 18.4.12 of the Judgment awarding monetary relief in favor of the Watermaster and against Phelan Piñon Hills Community Services District ("**Phelan**") in an amount equal to all delinquent Replacement Water Assessments ("**RWAs**") owed by Phelan under the December 23,

2015 Judgment and Physical Solution in the Antelope Valley Groundwater Adjudication (the "**Judgment**") in the amount of $1,355,890.08, plus accrued interest of $275,435.20, plus attorneys' fees and costs of $84,644.47, for a total amount of **$1,715,969.75**, and for such declaratory and injunctive relief as is necessary to prohibit Phelan from producing any further groundwater from the Antelope Valley Adjudicated Basin ("Basin") until all delinquent RWAs are paid in full.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declarations of Craig A. Parton and Patricia Rose, Exhibits 1 - 13, and on any other evidence and argument that may be presented on or before the hearing on this matter.

Respectfully submitted,

Dated: June 23, 2021

PRICE, POSTEL & PARMA LLP

By: _____

CRAIG A. PARTON
TIMOTHY E. METZINGER
CAMERON GOODMAN
Attorneys for
Antelope Valley Watermaster

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Watermaster is charged with administering the December 23, 2015 Judgment and Physical Solution ("**Judgment**"). The Watermaster's duties under the Judgment include, among other responsibilities, the levying and collection of Replacement Water Assessments ("**RWA(s)**").

Phelan has no right to groundwater in the Basin. (Judgment, ¶ 6.4.1.2.) The Judgment nevertheless provides that Phelan may produce a maximum of 1,200 acre-feet per year from the Basin, but only if Phelan pays RWAs to the Watermaster for all the water it produces. (*Ibid.*) The RWA payments enable the Watermaster to purchase water from other sources to replace the groundwater produced by Phelan, thereby mitigating the harm to the Basin caused by Phelan's production. (*Id.*, ¶ 9.2.) The Judgment strictly enjoins Phelan "from transporting Groundwater hereafter produced from the Basin to areas outside the Basin" unless the RWAs are paid. (*Id.*, ¶ 6.4.) Finally, the Judgment provides that the Court "retains and reserves full jurisdiction, power and authority for the purpose of enabling the Court, upon a motion of a party or Parties . . . to make such further and supplemental order or direction as may be necessary to interpret, enforce, administer or carry out this Judgment . . . ." (*Id.*, ¶ 6.5.) The Court of Appeal has affirmed the Judgment as to Phelan and it is now final and law of the case.

Since 2016, Phelan has pumped a total of 1,502.46 acre-feet of groundwater from the Basin. To date, however, Phelan has only paid RWAs for 2019 in the amount of $2,995.68, which represents Phelan's production of 3.16 acre-feet of Basin groundwater that year. Phelan still owes RWAs for 2016, 2017, 2018 and 2020 totaling $1,355,890.08, exclusive of interest, fees and costs, summarized as follows:

Year	Quantity (AF)	Rate/AF	RWA	Status
2016	770.63	$888.00	$684,319.44	Unpaid
2017	385.18	$896.00	$345,121.28	Unpaid
2018	176.83	$914.00	$161,622.62	Unpaid
2019	3.16	$948.00	$2,995.68	Paid
2020	166.66	$989.00	$164,826.74	Unpaid

The Watermaster has on multiple occasions sent invoices to Phelan in an effort to collect the delinquent RWAs in accordance with the Judgment and the Watermaster Rules and Regulations ("**R&Rs**"). In each instance, Phelan has refused to pay anything, and has instead unsuccessfully sought judicial relief in an effort to avoid and/or delay its obligation to pay RWAs.

Phelan has now benefitted from the use of Basin groundwater for over six years, but has only paid a small fraction of what it owes in RWAs. Phelan's payment of these delinquent RWAs is essential to the fundamental purpose of the Judgment and Physical Solution: preserving the health of the Basin.

For the reasons set forth below, the Watermaster respectfully requests monetary relief against Phelan for all delinquent RWAs for 2016, 2017 and 2018, and RWAs for 2020 which are currently due, in in the amount of $1,355,890.08, plus accrued interest of $275,435.20, plus attorneys' fees and costs of $84,644.47, for a total amount of **$1,715,969.75**. The Watermaster further requests declaratory and injunctive relief as necessary to prohibit Phelan from taking any further groundwater from the Basin until all such RWAs, interest, fees and costs are paid in full. Any further delay in Phelan's payment of RWAs will only exacerbate the harm to the Basin which has already been caused by Phelan's defiance of the Judgment.

II. STATEMENT OF FACTS

The Watermaster is charged with levying and collecting RWAs for the purpose of paying all costs related to Replacement Water necessary to replace all water produced in excess of any Party's production rights. (Judgment ¶¶ 3.5.41, 7.3, 9.2.) "The amount of the [RWA] shall be the amount of such excess Production multiplied by the cost to the Watermaster of Replacement Water, including any Watermaster spreading costs." (*Id.* ¶ 9.2.) The RWA rate is expressed in dollars per acre-foot, and is multiplied by the Replacement Obligation (in acre-feet) to determine a Party's total RWA. As set forth below, Phelan is obligated to pay—and the Watermaster is charged with collecting—RWAs for the water Phelan takes from the Basin.

///

///

///

A. Phelan's Status Under The Judgment

Phelan is a community services district that provides water to consumers in an area outside the Basin. Phelan acquires water from one well located inside the Basin and from other wells it owns outside the Basin. In the underlying Judgment, this Court determined that Phelan does not possess vested legacy rights, appropriative rights, or prescriptive rights to any groundwater in the Basin. (Judgment ¶ 6.4.1.2; Parton Decl., Exh. 2 at 3:15-16.) The Court of Appeal has affirmed the Judgment as to Phelan in its entirety, holding that this Court "correctly rejected Phelan's claim that it had cognizable water rights" in the Basin's aquifer. (Parton Decl., Exh. 1 at p. 5.)

Because all Basin groundwater used by Phelan is exported for use outside the Basin, Phelan's pumping of groundwater from the Basin deprives the aquifer of natural water "recharge" that would otherwise flow back into the Basin. As a result, all of Phelan's groundwater pumping negatively affects the health of the Basin. (Parton Decl., Exh. 2 at 3:15 - 7:9, Exh. 3 at 4:3 - 6:27.)

The Judgment contains a prohibitory injunction barring Phelan from pumping water from the Basin unless Phelan pays RWAs for all water taken, thus enabling the Watermaster to purchase imported Replacement Water from the State Water Project contractors. (Judgment ¶ 6.4.1.2; Parton Decl. Exh. 2 at 5:22 ("If [Phelan] uses water, it must pay for it.").)

B. Phelan's Failed Attempts to Avoid Payment of RWAs

The prohibitory injunction is plain and contains no exception—Phelan must pay RWAs in order to pump water. In defiance of the injunction, Phelan has continued pumping water while refusing to pay RWAs, and has exhausted every possible avenue to avoid and/or delay payment. In denying each of Phelan's attempts, this Court and the Fifth District Court of Appeals have both conclusively affirmed the Watermaster's authorization—and responsibility—to collect Phelan's delinquent RWAs without further delay.

i. *Phelan's 2016 Appeal to Avoid Paying RWAs*

On February 19, 2016, Phelan filed an appeal of the Judgment in which it asserted, among other things, that the Court erred in finding that Phelan has no legal rights to groundwater in the Basin. In an opinion issued on December 9, 2020, the Fifth District Court of Appeal sustained the

Court's finding that Phelan lacked such rights and affirmed the Judgment as to Phelan in its entirety. (Parton Decl.¶ 3, Exh. 1.)

ii. *Phelan's 2018 Motion to Avoid Paying RWAs*

On January 24, 2018, the Watermaster adopted Resolution No. R-18-04, instructing Watermaster staff to invoice Phelan for RWAs related to its groundwater use in 2016 and 2017. Thereafter Phelan filed a motion for declaratory relief with this Court, contending that it was not required to pay RWAs during the Rampdown Period (*i.e.*, for 2016 and 2017). The Watermaster filed an opposition, and the Court denied Phelan's motion in an order dated April 26, 2018 (the "**2018 Order**"). On May 17, 2018, Phelan filed an appeal of the 2018 Order, which appeal is still pending. (Parton Decl.¶ 5, Exh. 2.)

iii. *Phelan's 2019 Motion to Avoid Paying RWAs*

On September 5, 2019, the Watermaster sent Phelan an invoice to collect RWAs for 2016, 2017 and 2018. On September 27, 2019, Phelan filed a motion with this Court requesting declaratory relief and a stay of the Watermaster's collection of 2016 and 2017 RWAs pending a decision on its appeal of the 2018 Order. In the motion, Phelan contended that: (a) the RWA rates were not supported by adequate evidence, (b) the Watermaster had failed to establish rules and regulations for collection of RWAs, (c) a clerical error rendered the RWAs invoicing invalid, and (d) collecting the 2016 and 2017 RWAs was tantamount to collecting a money judgment from a governmental agency pending appeal and therefore barred pending a final decision on Phelan's appeal of the 2018 Order. The Watermaster opposed the motion. The Court rejected all of Phelan's arguments and denied Phelan's motion by order dated November 14, 2019. (Parton Decl. ¶ 6, Exh. 3.)

iv. *Phelan's 2020 Writ to Avoid Paying RWAs*

On December 20, 2019, Watermaster general counsel sent Phelan a letter demanding payment of RWAs for 2016, 2017 and 2018. On January 27, 2020, Phelan filed a petition for writ of supersedeas in the Fifth District Court of Appeal, seeking a stay of the Watermaster's collection of 2016 and 2017 RWAs pending the outcome of Phelan's appeal of the 2018 Order. Phelan again argued, *inter alia*, that the Judgment constitutes a mandatory injunction

automatically stayed pending appeal, and that as a government agency Phelan is not required to post a bond to avoid enforcement of a money judgment pending appeal. Notably, in its effort to obtain extraordinary relief, Phelan expressly represented to the Court of Appeal that it would pay the 2018 RWAs under protest pending appeal of the Judgment, a promise it did not keep. (Phelan's Petition for Writ of Supersedeas, p. 19.) The Watermaster filed an opposition, and on March 19, 2020, the Court of Appeal issued an order denying Phelan's petition in its entirety. The deadline for Phelan to seek Supreme Court review of the Court of Appeal's order denying the petition has expired, and therefore the order is now final. (Parton Decl. ¶ 7, Exh. 4.)

III. ARGUMENT

The Judgment and the R&Rs explicitly authorize the Watermaster to bring the instant motion to collect delinquent RWAs, together with interest thereon, attorneys' fees and costs. "Any assessment which becomes delinquent, as defined by rules and regulations promulgated by the Watermaster shall bear interest at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located." (Judgment ¶ 18.4.12.) "The delinquent assessment, together with interest thereon, costs of suit, attorneys' fees and reasonable costs of collection, may be collected pursuant to . . . motion by the Watermaster giving notice to the delinquent Party only . . . [or] such other lawful proceeding as may be instituted by the Watermaster or the Court." (*Ibid.*; *see also* R&Rs § 19.g ("Watermaster may recover delinquent assessments [including RWAs], together with interest thereon plus costs of suit, attorneys' fees and reasonable costs of collection, by filing a motion with the Court to enforce the terms of the Judgment pursuant to Code of Civil Procedure section 664.6.").) "The Watermaster shall also have the ability to seek to enjoin Production of those Parties . . . who do not pay assessments pursuant to this Judgment." (*Ibid.*; *see also* R&Rs § 19.i ("Any other remedy available to the Watermaster in law or equity may be employed at the discretion of Watermaster to address any circumstance related to management of the Basin in accordance with the Judgment and these R&Rs.").)

///

///

A. Collection of Delinquent RWAs

The Judgment makes clear that the Watermaster has the authority to levy and collect RWAs from Phelan pursuant to Paragraph 9.2. Phelan is enjoined from pumping groundwater, except as authorized in Paragraph 6.4.1.2. (Parton Decl., Exh. 2 at 3:15-16 ("Phelan has neither appropriative nor prescriptive rights to pump or produce groundwater in the adjudication area.").) Any groundwater use by Phelan is "in excess of the sum of [Phelan's] Production Right and Imported Water Return Flow," and Phelan must pay RWA on all groundwater it pumps from the Basin. (*Id.* at 5:21-22 (Phelan "has no right to produce water from the aquifer without paying for replacement water.").) The Watermaster is therefore explicitly authorized—and obligated—to impose RWAs on Phelan for all groundwater it uses. (*Id.* at 6:1-3 (Phelan "must . . . pay for all water pumped out of the adjudication area so that the water taken can be replaced by imported water.").)

Protection and preservation of the health of the Basin is paramount under the Judgment. One of the central components of the Watermaster's role in the underlying adjudication is to collect sufficient funds from the Parties to purchase Replacement Water to replenish all Basin groundwater pumped in excess of any Party's water rights. In Phelan's case, in order to avoid Material Injury to the Basin, the Judgment explicitly requires that all water used by Phelan be replaced using RWA proceeds.

Phelan is currently delinquent in payment of a total of $1,191,063.34 in RWAs for 2016, 2017 and 2018, which represents Phelan's use of a total of 1,332.64 acre-feet of Basin groundwater that has yet to be replenished. Phelan also currently owes $164,826.74 in RWAs for 2020, which represents a total of 166.66 acre-feet of Basin groundwater. (Rose Decl. ¶¶ 3, 4, 6-8, Exh. 7-12.) Most of these payments are now several years late, and Phelan even failed to pay the 2019 RWAs on time. The health of the Basin relies on importation of State Water Project water to replenish this groundwater, and any further delay in bringing the aquifer back to sustainable levels could have severely deleterious results. (Parton Decl., Exh. 2 at 6:17-19 ("If, as it requests, [Phelan] is not required to pay for water pumped during 2016 and [2]017, its pumping would contribute to the overdraft by pumping water to which it has no right.").) Such a result is

inconsistent with the explicit purpose of the Physical Solution, which is to bring the Basin into balance by allowing groundwater usage only within the Native Safe Yield of the Basin. (Judgment ¶ 7.4.) For these reasons, the Court (by stipulation of the Parties) conferred enforcement authority on the Watermaster to levy and collect RWAs.

Phelan's contention that it is excused from payment of 2016 and 2017 RWAs has been dismissed by this Court, and the Court of Appeals has rejected Phelan's argument that the Watermaster's collection of RWAs for 2016 and 2017 is stayed pending the outcome of Phelan's appeal of the issue. (Parton Decl. Exh. 2, 4.) Phelan's other attempts to undermine the Watermaster's authority to collect RWAs in general have likewise been conclusively dismissed by this Court. (Parton Decl. Exh. 3.) The Watermaster is now left with no remedies to collect these much-needed RWAs other than through an order for monetary relief. The Judgment expressly requires Phelan to pay the RWAs in accordance with Watermaster schedules and procedures, and further provides that Phelan is automatically subject to the prohibitory injunction against producing water from the Basin until all such delinquent RWAs are paid in full. Despite the Court's injunction, however, Phelan continues to produce groundwater from the Basin without paying RWAs. In accordance with its retention of jurisdiction to fully enforce the Judgment, the Court should order the payment of the delinquent RWAs and enjoin Phelan from producing any additional groundwater from the Basin until such delinquent RWAs, interest, fees and costs are fully paid.

B. Interest, Attorneys' Fees and Costs of Collection

The Judgment and the R&Rs explicitly authorize the Watermaster to collect Phelan's delinquent RWAs together with interest thereon (accruing from the due date at the current real property tax delinquency rate for the county in which the property of the delinquent Party is located), costs of suit, attorneys' fees and reasonable costs of collection. (Judgment ¶ 18.4.12; R&Rs § 19.g.)

///

///

///

i. *Interest*

Phelan and its Well 14 are located in San Bernardino County, where the following penalties are imposed upon delinquent property tax payments: (1) if the first installment of the property tax is not paid by the deadline, a penalty of 10% of the tax owed will be imposed; (2) if the second installment of the property tax is not paid by the deadline, a penalty of 10% of the tax amount owed, plus $10, will be imposed; and (3) beginning 12 months following the first property tax installment due date, additional penalties are imposed at the rate of 1.5% of the tax amount owed per month, plus $15. (Parton Decl. ¶ 13, Exh. 6; Rev. & Tax. Code §§ 2617, 2618, 4103.)

The Watermaster sends invoices for RWAs to the Parties at different times each year, depending upon when the RWA rates for that year are approved by the Watermaster Board, and depending upon when Watermaster staff finalizes RWA calculations. In each instance, RWAs are due 30 days after the invoice date in a lump sum (rather than in installments), and are assessed a single 10% delinquency penalty thereafter. (Rose Decl. ¶ 5.) As such, the Watermaster hereby seeks interest on the delinquent RWAs set forth above at the rate of 10% on the total amount due, plus 1.5% per month beginning 12 months following the delinquency date stated in the invoice. The Watermaster will not seek collection of the $10 or $15 fees imposed by the San Bernardino Tax Collector.

a. ***Interest On 2016, 2017 and 2018 RWAs***

At its August 28, 2019 meeting, the Watermaster Board considered and adopted Resolution No. R-19-27, setting the RWA rates applicable to Phelan for 2016, 2017 and 2018. (Rose Decl. ¶ 6, Exh. 7.) On or about September 26, 2019, after rectifying a clerical error on a prior invoicing, Watermaster staff sent Phelan an invoice for 2016, 2017 and 2018 RWAs in the total amount of $1,191,063.34. (Rose Decl. ¶ 6; Exh. 8.) To date, Phelan has failed to pay any of the 2016, 2017 or 2018 RWAs demanded in the September 26, 2019 invoice. (Rose Decl. ¶ 6.) Therefore a 10% penalty of $119,106.33 shall be imposed on Phelan's delinquent RWAs for 2016, 2017 and 2018. Interest on the delinquent 2016, 2017 or 2018 RWAs at the rate of 1.5% per month is equivalent to $595.53 per day, assuming an average 30-day month. Therefore Phelan

owes additional interest at the rate of $595.53 per day, beginning November 1, 2020 through the July 21, 2021 (the date of the hearing on this motion), which amount totals $156,029.30. (Parton Decl. ¶ 15; Exh. 13.)

b. *Interest on 2019 RWAs*

At its April 24, 2019 meeting, the Watermaster Board considered and adopted Resolution No. R-19-11, setting the RWA rates applicable to Phelan for 2019. (Rose Decl. ¶ 7, Exh. 9.) On or about May 20, 2020, Watermaster staff sent Phelan an invoice for 2019 RWAs in the total amount of $2,995.68, with a due date of June 19, 2020. (Rose Decl. ¶ 7; Exh. 10.) Phelan paid the 2019 RWAs in full on March 17, 2021, after the delinquency date stated in the invoice. (Rose Decl. ¶ 7.) Therefore a 10% penalty of $299.57 shall be imposed on Phelan's delinquent RWAs for 2019.

ii. *Attorneys' Fees and Costs of Collection*

Attached to the Declaration of Craig A. Parton as Exhibit "5" is a compilation of the Watermaster's billing records from March 16, 2018 through May 26, 2021, reflecting all legal expenses the Watermaster has incurred in seeking to collect Phelan's delinquent RWAs, including but not limited to opposing Phelan's multiple attempts to seek judicial relief in order to avoid payment of such RWAs. The Declaration of Mr. Parton establishes the reasonableness of the fees sought. The procedure for determining the reasonable attorneys' fees normally begins with the "lodestar" (*i.e.*, the reasonable hourly rate) multiplied by the number of hours reasonably expended. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal. 3d 311, 322.)

a. *Price, Postel & Parma's Rates Are Reasonable*

The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.) To determine reasonable market value, the court must determine whether the requested rates are "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work. (*Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal. App. 4th 740, 783.) Evidence that the prevailing party's counsel charges the same rates in other matters is probative that the rates charged are reasonable. (*Margolin v. Reg'l Planning Com.* (1982) 134 Cal. App. 3d 999, 1005.) The Watermaster's general counsel, Price, Postel & Parma LLP ("PPP"), provided the

Watermaster with monthly billing statements during the course of the RWA dispute with Phelan, reflecting the billing entries attached as Exhibit "5" to Mr. Parton's Declaration. (Parton Decl. ¶ 8.)

The rates that were charged by PPP for attorney time in this matter ranged from $270 to $495 per hour. Cameron Goodman, an associate of the firm, billed an average rate of $292.5 per hour; and Craig A. Parton and Timothy E. Metzinger, both partners of the firm, each billed an average rate of $445 per hour. These rates reflect the firm's public agency rates, which are between 25% and 34% lower than PPP's customary hourly rates. (Parton Decl. ¶ 10.) The rates charged by PPP in this matter were fair and reasonable. (Parton Decl. ¶ 11-12.)

b. *The Time Expended by PPP on This Matter Was Reasonable*

The time expended on this case by PPP was reasonable under the circumstances. To begin with, Phelan has shown continuous obstinance in the face of its clear obligation under the Judgment to pay RWAs for the water it takes from the Basin. In a letter dated July 19, 2017 and transmitted to the Watermaster Engineer, counsel for Phelan originally raised the contention that Phelan was not obligated to pay RWAs for 2016 or 2017. In response, the Watermaster Board requested that PPP evaluate whether this conclusion was accurate. PPP subsequently prepared a memorandum, concluding that Phelan's counsel was incorrect, and that the Watermaster was obligated to collect RWAs from Phelan beginning in 2016. (Parton Decl. ¶ 4.)

Thereafter, as discussed above, Phelan began its attempts to thwart the Watermaster's efforts to collect RWAs. From its 2018 motion seeking relief from the obligation to pay RWAs for 2016 and 2017, to its 2019 motion seeking to invalidate the Watermaster's efforts to collect RWAs in general, to its 2020 petition for writ of supersedeas seeking a stay of the Watermaster's collection of RWAs for 2016 and 2017, Phelan has consistently resorted to expensive and ultimately futile litigation tactics, necessitating substantial Watermaster attorney time. Had the Watermaster failed to engage PPP to oppose Phelan's motions, the health of the Basin would have been threatened, potentially undermining the Watermaster's ability to collect the vitally important RWAs from both Phelan and other Parties.

The billing entries set forth in Exhibit 5 attached to Mr. Parton's Declaration reflect in

detail the legal services provided to the Watermaster in this matter. In total PPP was obligated to oppose three Phelan motions, including briefing and attending hearings, and was required to provide analysis and recommendations to the Watermaster Board at each step in the process.

For these reasons, the Watermaster respectfully requests the Court award attorneys' fees to the Watermaster in the amount of $84,400 and costs of $244.47, in the total amount of **$84,644.47**.

C. DECLARATORY AND INJUNCTIVE RELIEF

Phelan's obligation to pay RWAs is elective, and arises only if Phelan wishes to avoid the prohibitory injunction against exporting groundwater from the Basin. (Judgment ¶ 6.4.1.2). The Judgment does not permit Phelan to invoke the exception to the prohibitory injunction without paying RWAs. Having elected to pump groundwater from the Basin, Phelan is responsible for the RWAs imposed by the Watermaster. Phelan's payment of the RWA reflects a condition under the Judgment that Phelan accepted when it chose to pump groundwater for export from the Basin.

This Court and the Fifth District Court of Appeals have both conclusively affirmed that Phelan is automatically subject to this prohibitory injunction against transportation whenever it has failed to pay, or is delinquent in payment of, RWAs. (Parton Decl. Exh. 2, 3, 4.) This prohibitory injunction is self-executing, and Phelan is in ongoing violation of the injunction each day it continues to pump groundwater from the Basin without coming current in payment of delinquent RWAs. (*Sun-Maid Raisin Growers of Cal. v. Paul* (1964) 229 Cal.App.2d 368, 374; *Paramount Pictures Corp. v. Davis* (1964) 228 Cal.App.2d 827, 835.)

At this point in time, Phelan's ongoing violation of the Judgment is clear. If Phelan wishes to continue pumping groundwater, it must render the injunction inapplicable to its production by invoking the exception to the injunction, which requires payment of all delinquent RWAs. Notwithstanding this clear directive, Phelan continues to pump groundwater from the Basin and refuses to pay all past-due RWAs. As such, in accordance with Paragraph 18.4.10 of the Judgment, the Watermaster requests a declaration from this Court that Phelan is currently, and shall be, subject to the prohibitory injunction against exportation of groundwater from the Basin until it pays all past-due RWAs.

IV. CONCLUSION

For the reasons discussed above, the Watermaster respectfully requests that this Court enter a money judgment against Phelan for all RWAs in the amount of $1,355,890.08, plus accrued interest of $275,435.20, plus attorneys' fees and costs of $84,644.47, for a total amount of **$1,715,969.75**. The Watermaster further requests that this Court declare that Phelan is prohibited from exporting any further groundwater from the Basin unless and until it pays all past-due RWAs, thereby reaffirming the prohibitory injunction already in place under the Judgment.

Respectfully submitted,

Dated: June 23, 2021

PRICE, POSTEL & PARMA LLP

By: _____

CRAIG A. PARTON
TIMOTHY E. METZINGER
CAMERON GOODMAN
Attorneys for
Antelope Valley Watermaster

DECLARATION OF CRAIG A. PARTON

I, CRAIG A. PARTON, declare as follows:

1. I am a partner in the law firm of Price, Postel & Parma LLP ("PPP"), counsel of record for the Antelope Valley Watermaster ("Watermaster") herein. I have personal knowledge of the matters set forth below and if called as a witness could testify competently thereto.

2. I have served as the principal attorney responsible for providing general counsel services to the Watermaster since November 2017, and I have been intimately involved in the ongoing dispute with Phelan Piñon Hills Community Services District ("Phelan") related to collection of delinquent Replacement Water Assessments ("RWAs").

3. Phelan originally attempted to avoid its obligation to pay RWAs by filing an appeal of the Judgment on February 19, 2016, in which it asserted, among other things, that the Court erred in finding that Phelan has no legal rights to groundwater in the Basin. The Fifth District Court of Appeal issued an opinion on December 9, 2020, sustaining the Court's finding that Phelan lacked such rights and affirmed the Judgment as to Phelan in its entirety, a true and correct copy of which is attached hereto as Exhibit "1."

4. The Watermaster began incurring attorneys' fees related to collection of Phelan's RWAs in or about January 2018, when, in response to a letter from Phelan's counsel dated July 19, 2017 and transmitted to the Watermaster Engineer, the Watermaster Board asked PPP to opine as to whether Phelan was obligated to pay RWAs during 2016 and 2017. PPP subsequently prepared a memorandum concluding that the Watermaster was obligated to collect RWAs from Phelan beginning in 2016.

5. Thereafter, Phelan continued its attempts to thwart the Watermaster's efforts to collect RWAs. On January 24, 2018, the Watermaster adopted Resolution No. R-18-04, instructing Watermaster staff to invoice Phelan for RWAs related to its groundwater use in 2016 and 2017. Thereafter Phelan filed a motion for declaratory relief with this Court, contending that it is not required to pay RWAs during the Rampdown Period (*i.e.*, for 2016 and 2017). PPP prepared and filed the Watermaster's opposition, and the Court denied Phelan's motion in an order dated April 26, 2018 (the "2018 Order"). Attached hereto as Exhibit "2" is a true and correct copy of the 2018

Order. On May 17, 2018, Phelan filed an appeal of the 2018 Order, which appeal is still pending.

6. On September 5, 2019, the Watermaster sent Phelan an invoice to collect RWAs for 2016, 2017 and 2018. On September 27, 2019, Phelan filed a motion for declaratory relief with this Court, requesting a stay of the Watermaster's collection of 2016 and 2017 RWAs pending a decision on its appeal of the 2018 Order. In the motion, Phelan contended that the RWA rates were not supported by adequate evidence, that the Watermaster had failed to establish rules and regulations for collection of RWAs, that a clerical error rendered the RWAs invoicing invalid, and that the Watermaster cannot collect the 2016 and 2017 RWAs until a decision is rendered on Phelan's appeal of the 2018 Order. PPP prepared and filed the Watermaster's opposition, and the Court denied Phelan's motion in an order dated November 14, 2019 (the "2019 Order"). Attached hereto as Exhibit "3" is a true and correct copy of the 2019 Order.

7. On December 20, 2019, PPP sent a letter to Phelan's counsel demanding payment of RWAs for 2016, 2017 and 2018. On January 27, 2020, Phelan filed a petition for writ of supersedeas in the Fifth District Court of Appeal, seeking a stay of the Watermaster's collection of 2016 and 2017 RWAs pending the outcome of Phelan's appeal of the 2018 Order. PPP prepared and filed the Watermaster's opposition, and on March 19, 2020, the Court of Appeal issued an order denying Phelan's petition in its entirety (the "2020 Order"). Attached hereto as Exhibit "4" is a true and correct copy of the 2020 Order. The deadline for Phelan to seek Supreme Court review of the Court of Appeal's order denying the petition has expired, and therefore the order is now final.

8. Attached hereto as Exhibit "5" is a true and correct copy of our firm's billing ledger detailing all time entries for fees billed for this matter for the period of time from March 16, 2018 through May 26, 2021, which totals $81,075. Additional attorneys' fees in the amount of $3,325 (5 hours of partner time at $395 per hour, and 5 hours of associate time at $270 per hour) are estimated for the period of June 1, 2021 through the time of the hearing on the instant motion. Therefore, the Watermaster seeks a total of **$84,400** in attorneys' fees related to efforts to collect Phelan's RWAs.

9. The Watermaster also seeks a total of **$244.47**, which represents the legal costs incurred by PPP in representing the Watermaster in this matter, as further set forth in Exhibit 5.

10. Throughout PPP's representation of the Watermaster on this matter, the hourly rate

billed to the Watermaster reflected PPP's public agency rates. The public agency rates reflect an approximate 25% to 34% reduction in our customary rates.

11. Phelan could and should have paid the RWAs it owed pursuant to the clear terms of the Judgment, rather than seeking judicial remedies at every available opportunity in a futile effort to delay the inevitable. The attorneys' fees incurred by the Watermaster in seeking to recover the RWAs owed by Phelan, and simultaneously opposing each motion filed by Phelan, were necessary in order to protect against the substantial harm that would be caused to the Basin if Phelan were successful in its attempts to invalidate and undermine the Watermaster's authority and obligation to collect these vitally important RWAs and purchase water to replenish the Basin.

12. In addition to the aforementioned litigation initiated by Phelan and successfully opposed by PPP, Phelan has more recently proposed to satisfy its RWA obligations by purchasing transfer water from another Party to the Judgment. The Watermaster engaged PPP to provide a legal analysis as to the legality of this proposal, and PPP eventually determined that this was not permitted under the plain terms of the Judgment. Additional PPP time has been necessary to evaluate legal options for consideration by the Watermaster Board in collecting Phelan's delinquent RWAs, and also to bring the instant motion. Further PPP time will be necessary to reply to Phelan's opposition to this motion, attend the hearing thereon, and subsequently to enforce the money judgment sought herein.

13. As set forth in Paragraph 18.4.12 of the Judgment, the Watermaster is authorized to collect interest on delinquent RWAs "at the then current real property tax delinquency rate for the county in which the property of the delinquent Party is located." The real property tax delinquency rates for the San Bernardino County Tax Collector are posted online at https://www.mytaxcollector.com/trImportantDates.aspx. A true and correct copy of the San Bernardino County Tax Collector's fee schedule for Fiscal Year 2020-2021, downloaded from the aforementioned website on April 22, 2021, is attached hereto as Exhibit "6".

///

///

14. In accordance with California Revenue & Taxation Code Sections 2617, 2618 and

4103, the San Bernardino County Tax Collector imposes penalties on delinquent real property taxes as follows: (1) if the first installment of the property tax is not paid by the deadline, a penalty of 10% of the tax owed will be imposed; (2) if the second installment of the property tax is not paid by the deadline, a penalty of 10% of the tax amount owed, plus $10, will be imposed; and (3) beginning 12 months following the first property tax installment due date, additional penalties are imposed at the rate of 1.5% per month, plus $15.

15. Attached hereto as Exhibit "13" is a spreadsheet reflecting the entire past-due amount of RWAs due from Phelan, plus attorneys' fees and costs, plus accrued interest thereon through July 21, 2021.

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

Dated: June 23, 2021

CRAIG A. PARTON

DECLARATION OF PATRICIA ROSE

I, PATRICIA ROSE, declare as follows:

1. I have personal knowledge of the facts set forth herein, and if called upon to testify thereto, I could and would competently do so under oath.

2. I serve as Secretary to the Board of the Antelope Valley Watermaster (the "Watermaster"). I work with Watermaster staff on a daily basis, and I am familiar with the process whereby Watermaster staff prepares, finalizes, and sends invoices for Replacement Water Assessments ("RWAs").

3. Phelan is currently delinquent in payment of a total of $1,191,063.34 in RWAs for 2016, 2017, and 2018, which represents Phelan's use of 1,332.64 acre-feet of Basin groundwater.

4. Phelan also currently owes $164,826.74 in RWAs for 2020.

5. The Watermaster sends invoices for RWAs at different times each year, depending upon when the RWA rates for that year are approved by the Watermaster Board, and depending upon when Watermaster staff finalizes RWA calculations. In each instance, RWAs are due 30 days after the invoice date in a lump sum (rather than in installments), and are assessed a single 10% delinquency penalty thereafter.

6. At its August 28, 2019 meeting, the Watermaster Board considered and adopted Resolution No. R-19-27, setting the RWA rates applicable to Phelan for 2016, 2017 and 2018. A true and correct copy of Watermaster Resolution No. R-19-27 is attached hereto as Exhibit "7." On or about September 26, 2019, after rectifying a clerical error on a prior invoicing, Watermaster staff sent Phelan an invoice for 2016, 2017 and 2018 RWAs in the total amount of $1,191,063.34. A true and correct copy of the September 26, 2019 invoice is attached hereto as Exhibit "8." To date, Phelan has failed to pay any of the 2016, 2017 or 2018 RWAs demanded in the September 26, 2019 invoice.

7. At its April 24, 2019 meeting, the Watermaster Board considered and adopted Resolution No. R-19-11, setting the RWA rates applicable to Phelan for 2019. A true and correct copy of Watermaster Resolution No. R-19-11 is attached hereto as Exhibit "9." On or about May 20, 2020, Watermaster staff sent Phelan an invoice for 2019 RWAs in the total amount of

$2,995.68, with a due date of June 19, 2020. Phelan paid the 2019 RWAs in full on March 17, 2021, after the delinquency date stated in the notice. A true and correct copy of the May 20, 2020 invoice, and Phelan's payment thereof, is attached hereto as Exhibit "10."

8. At its February 26, 2020 meeting, the Watermaster Board considered and adopted Resolution No. R-20-08, setting the RWA rates applicable to Phelan for 2020. A true and correct copy of Watermaster Resolution No. R-20-08 is attached hereto as Exhibit "11." A true and correct copy of the invoice for Phelan's 2020 RWAs in the amount of $164,826.74 is attached hereto as Exhibit "12."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on June 11 2021, at Palmdale, California.

Patricia Rose

PATRICIA ROSE

Exhibit 1

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

Coordination Proceeding Special Title (Rule 3.3550(c)) ANTELOPE VALLEY GROUNDWATER CASES†	
PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT, Cross-complainant and Appellant, v. CALIFORNIA WATER SERVICE COMPANY et al., Cross-defendants and Respondents.	F082094 (JCCP No. 4408) **OPINION**

APPEAL from a judgment of the Superior Court of Los Angeles County. Jack Komar,‡ Judge.

---

*Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of parts I., III., and IV. of the Discussion.

†*Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Los Angeles County, No. BC325201); *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Kern County, No. S-1500-CV254348); *Wm. Bolthouse Farms, Inc. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC353840); *Diamond Farming Co. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC344436); *Diamond Farming Co. v. Palmdale Water Dist.* (Super. Ct. Riverside County, No. RIC344668); *Willis v. Los Angeles County Waterworks District No. 40* (Super. Ct. Los Angeles County, No. BC364553); *Wood v. Los Angeles County Waterworks District No. 40* (Super. Ct. Los Angeles County, No. BC391869).

‡Retired judge of the Santa Clara Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Aleshire & Wynder, June S. Ailin and Nicolas D. Papajohn for Cross-complainant and Appellant.

Lagerlof, Senecal, Gosney & Kruse and Thomas S. Bunn III for Cross-defendant and Respondent Palmdale Water District.

Murphy & Evertz and Douglas J. Evertz for Cross-defendants and Respondents City of Lancaster and Rosamond Community Services District.

Olivarez Madruga Lemieux O'Neill and W. Keith Lemieux for Cross-defendants and Respondents Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community Services District, North Edwards Water District, Llano Del Rio Water Company, Llano Mutual Water Company, Big Rock Mutual Water Company and Quartz Hill Water District.

Mary Wickham, County Counsel, Warren R. Wellen, Deputy County Counsel; Best Best & Krieger, Eric L. Garner, Jeffrey V. Dunn, and Wendy Y. Wang for Cross-defendant and Respondent Los Angeles County Waterworks District No. 40.

Kuhs & Parker and Robert G. Kuhs for Cross-defendants and Respondents Tejon Ranchcorp, Tejon Ranch Company and Granite Construction Company.

Law Offices of LeBeau Thelen, and Bob H. Joyce for Cross-defendants and Respondents Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC.

Michael N. Feuer, City Attorney; Kronick, Moskovitz, Tiedemann & Girard and Eric N. Robinson for Cross-defendants and Respondents City of Los Angeles and Los Angeles World Airports.

Venable and William M. Sloan for Cross-defendant and Respondent U.S. Borax, Inc.

Richards, Watson & Gershon and James L. Markman for Cross-defendant and Respondent Antelope Valley–East Kern Water District.

Ellison, Schneider, Harris & Donlan and Christopher M. Sanders for Cross-defendants and Respondents Los Angeles County Sanitation Districts Nos. 14 and 20.

Zimmer & Melson and Richard Zimmer for Cross-defendants and Respondents Wm. Bolthouse Farms and Bolthouse Properties, LLC.

-ooOoo-

Over 20 years ago, the first lawsuits were filed that ultimately evolved into this proceeding known as the Antelope Valley Groundwater Cases (AVGC). The AVGC proceeding litigated whether the water supply from natural and imported sources, which replenishes an alluvial basin from which numerous parties pumped water, was inadequate to meet the competing annual demands of those water producers, thereby creating an "overdraft" condition. Numerous parties asserted that, without a comprehensive adjudication of all competing parties' rights to produce water from and a physical solution for the aquifer, this continuing overdraft would negatively impact the health of the aquifer. Phelan Piñon Hills Community Services District (Phelan) ultimately became involved in the litigation as one of the thousands of entities and people who asserted they were entitled to draw water from the aquifer.

After the Judicial Council ordered all then-pending lawsuits consolidated into this single adjudication proceeding, the trial court embarked on an 11-year process in which it, seriatim, defined the geographical boundaries for the Antelope Valley Adjudication Area (AVAA) to determine which parties would be necessary parties to any global adjudication of water rights, and then determined that the aquifer encompassed within the AVAA boundaries (the AVAA basin) had sufficient hydrologic interconnectivity and conductivity to be defined as a single aquifer for purposes of adjudicating the competing groundwater rights claims. Its next phase found the AVAA basin was in a state of chronic overdraft because extractions exceeded the basin-wide annual "safe yield" of 110,000 acre-feet per year (afy) by a considerable margin. The next phase quantified how much water was currently being pumped by each of the major competing water

rights claimants; these annual extractions (even without considering the amounts extracted by a large class of overlying right holders known as the "Small Pumper Class") were in excess of the safe yield for the AVAA basin. The next phase, which contemplated trial of the issues of federal reserved water rights and imported water return flow rights, was interrupted by settlement discussions, which ultimately produced an agreement among the vast majority of parties in which they settled their respective groundwater rights claims and agreed to support the contours of a proposed plan (the Physical Solution) designed to bring the AVAA basin into hydrological balance.

Phelan was not among the settling parties. Accordingly, before considering whether to approve the proposed global water allocations and Physical Solution for the AVAA basin, the court first conducted separate trials at which Phelan's claims were litigated and resolved. Thereafter, the court held a trial on the rationale for and efficacy of the proposed Physical Solution. After finding the proposed Physical Solution was reasonable, fair and beneficial as to all parties, and served the public interest, the court approved the Physical Solution.

Phelan, which provides water to its customers who are located outside the AVAA boundaries, became subject to the AVGC litigation because a significant source of its water is pumping from a well (Well 14) located in the AVAA basin. The court's judgment and adopted Physical Solution concluded that, while Phelan held no water rights in the AVAA basin (either as an appropriator of a surplus or by prescription), Phelan could continue operating Well 14 to draw up to 1,200 afy to distribute to its customers outside the AVAA, on condition that Phelan's pumping causes no material harm to the AVAA basin and that Phelan pays a "Replacement Water Assessment" for any water it pumped for use outside the AVAA.

Phelan challenges the judgment, raising four claims of error. First, Phelan asserts there is no substantial evidence to support the trial court's conclusion the Physical Solution will bring the AVAA basin into hydrological balance. Second, it argues the trial

court erred when it rejected Phelan's claim that, even assuming the AVAA basin was in overdraft, Phelan was entitled to water rights in the AVAA basin as an "appropriator for municipal public use" under Water Code sections 106 and 106.5. Third, Phelan asserts that, assuming the existence of a "surplus" in the AVAA basin *was* a condition precedent to Phelan's acquisition of water rights as an appropriator, the phasing of the various trials denied Phelan its due process rights to establish the AVAA basin *did* have a surplus at the time Phelan began operating Well 14. Finally, Phelan contends the trial court erred when it rejected its claim that it was entitled to credit for "return flows" and erred by imposing a Replacement Assessment Fee based on the gross amount of water extracted by Well 14.

We conclude substantial evidence supports the judgment as to Phelan, that the court correctly rejected Phelan's claim it had cognizable water rights as an appropriator for municipal purposes, that Phelan was not deprived of its due process rights to present its claims, and that the court did not err in rejecting Phelan's claim to return flows from native water it pumped from the AVAA basin. Accordingly, we will affirm the judgment as to Phelan.

FACTUAL AND PROCEDURAL HISTORY

Factual Setting

There is a single aquifer, consisting of several hydrologically interconnected subbasins, underlying the AVAA. That aquifer was in a state of overdraft—meaning that long-term extractions from the aquifer have exceeded the amount of water replenishing that aquifer by "significant margins"—and had been in overdraft for decades before the current litigation commenced in 1999. While localized conditions led to variable impacts from this overdraft within specific subportions of the AVAA, the overall water levels within the AVAA basin were declining, and the declining water levels have caused significant long-term damage, including subsidence and lost aquifer storage capacity. The estimated average annual safe yield from all sources of recharge (natural sources such as precipitation, external sources such as imported water, and return flows) was

110,000 afy for the AVAA basin, but the numerous parties who pumped water from that basin were annually extracting between 130,000 and 150,000 afy.

Phelan owns a parcel within the boundaries of the AVAA on which it operates Well 14. In late 2005, it started operating Well 14 and extracting water from the AVAA basin, and it first delivered water from Well 14 to its customers in 2006. Phelan is a public agency organized as a community services district supplying water to over 21,000 residents, nearly all of whom use it for domestic uses, and Phelan's source for the water it distributes is from groundwater pumped from its various wells. Phelan's entire service district is outside the AVAA, although a portion of its service district and some of its customers overlay a portion of the alluvial basin defined by the California Department of Water Resources' Bulletin 118 as the "Antelope Valley Groundwater Basin" (AVGB).

The Litigation Commences

Between late 1999 and early 2000, the first lawsuits (which ultimately evolved into the AVGC) were filed by Diamond Farming Company and Wm. Bolthouse Farms, Inc., concerning competing water rights in the aquifer. These actions, styled as quiet title actions against various public water suppliers, sought a determination of the various rights and priorities of overlying landowners and others claiming rights to extract water from the AVAA basin. Over the next several years, additional complaints and cross-complaints were filed, which evolved into the AVGC and which sought a comprehensive determination of the water rights of thousands of persons, companies, public water suppliers, and the federal government, as well as a physical solution to alleviate the alleged overdraft conditions in the AVAA and to protect the AVAA basin.

Phase 1: Determining the Geographic Boundaries of the AVAA

The trial court segmented the various issues raised by the actions and held trials on these issues in phased proceedings. In October 2006, the court conducted trial to establish the jurisdictional boundaries for the AVAA. Establishing the boundaries was essential in order to determine what parties and entities with claims to the groundwater

would be necessary parties in the litigation, as either overlying owners with usufructuary rights or as appropriators producing water from the aquifer, so that a comprehensive adjudication of all claims could be made in later proceedings. After hearing expert testimony, the court determined the boundaries of the alluvial basin as defined by the California Department of Water Resources' Bulletin 118 should be the "basic" jurisdictional boundaries for the AVAA, although it set the easternmost boundary for the AVAA at the jurisdictional line that had been previously established as the westernmost boundary in the "Mojave litigation." The court left open the possibility that areas presently encompassed within the AVAA might be excluded (if shown to lack any real connection to the AVAA aquifer), or other areas might be included, as might be warranted by further evidence.

Phase 2: Determining Hydraulic Connectivity Within the AVAA Boundaries

In the second phase, the court heard evidence to assess the hydrologic nature of the aquifer within the geographical boundaries set for the AVAA. The court specifically evaluated whether there were any distinct subbasins within the AVAA basin that lacked any hydrologic connection such that they should be treated as separate, unconnected basins for purposes of adjudication. The court concluded there was enough hydraulic connectivity within the AVAA basin as a whole to obviate any claim that certain sections should be treated as separate basins.

Phelan Intervenes

In late 2008, Phelan filed its cross-complaint alleging seven causes of action. Among its claims were (1) Phelan had an appropriative right to pump water from the AVAA because there was surplus water in that the basin's safe yield exceeds the volume pumped from the basin; (2) Phelan had "municipal priority" rights under California law "both as a result of the priority and extent of its appropriative and prescriptive rights, and as a matter of law and public policy" under statutory law; (3) Phelan had the right to the "recapture of return flows"; and (4) that some parties' use of water was unreasonable and

constituted "waste, unreasonable use or an unreasonable method of diversion or use," and such parties' water rights should be determined and limited to reasonable uses rather than actual uses.

Phase 3: Determining Safe Yield and Overdraft

In the Phase 3 trial, the parties litigated the safe yield for the AVAA basin and whether the area encompassed within the AVAA was in overdraft.[1] The Public Water Suppliers[2] (PWS), along with numerous other parties, contended the average annual extractions from the AVAA basin exceeded the relevant safe yields and that it was in overdraft. It proffered extensive testimony on average annual recharge, annual extractions, and the deleterious impacts from the chronic overdraft of the AVAA basin.

Phelan did not contest the contentions of the PWS in Phase 3 that the AVAA basin was in overdraft. Instead, Phelan sought to proffer evidence from its expert, Thomas Harder, concerning his study of the conditions in an area that encompassed both a southeast corner of the AVAA basin as well as land outside the boundaries of the AVAA.

---

[1]In the context of an alluvial basin, "safe yield" is defined as "'the maximum quantity of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result.' The phrase 'undesirable result' is understood to refer to a gradual lowering of the ground water levels resulting eventually in depletion of the supply." (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, disapproved on other grounds in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1248.) In essence, "safe yield" examines the available groundwater recharge from replenishing sources such as native precipitation and associated runoff, along with return flows from such sources, less losses incurred through natural groundwater depletions such as subsurface outflow or evaporative losses. (*City of Los Angeles*, *supra*, at pp. 278–279; see *Tehachapi–Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 996, fn. 3 ["Natural 'safe yield' is the maximum quantity of ground water, not in excess of the long-term, average, natural replenishment (e.g., rainfall and runoff), which may be extracted annually without eventual depletion of the basin"].) "Overdraft" examines whether the average annual withdrawals or diversions exceed the safe yield of a groundwater supply and would lead to ultimate depletion of the available supply. (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1272.)

[2]Consisting of cross-defendants California Water Service Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No. 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District, and Quartz Hill Water District.

Phelan contended (consistent with the PWS position) Mr. Harder would confirm that the area he studied showed pumping by Phelan and others has resulted in declining water levels in the southeast portion of the AVAA, and that "overdraft exists in the Southeast area of the [AVAA], or will exist in the near future, if groundwater pumping in this area continues at current rates or increases."[3]

The court found the AVAA basin was in a state of overdraft, and that average extractions had significantly exceeded average recharge for decades, causing a steady lowering of water levels and accompanying subsidence since 1951. The court concluded the average total safe yield from all sources[4] was 110,000 afy for the AVAA as a whole, while current actual extractions from the AVAA as a whole (ranging between 130,000 and 150,000 afy) exceeded average annual recharge. Accordingly, the court found (1) the AVAA was in overdraft and (2) the annual safe yield was a total of 110,000 afy.

Phase 4: Determining Actual Groundwater Production by Claimants

In the next phase, the court ultimately determined it would limit trial to individualized determinations of how much water the various claimants actually pumped

---

[3]The court ultimately ruled that, while Harder could testify about impacts of pumping from Well 14 because it was sited within the AVAA jurisdictional boundaries, the bulk of Harder's proffered testimony would be excluded from the Phase 3 trial because Harder's testimony was principally focused on pumping and return flows in areas outside the boundaries of the AVAA.

[4]It appears the *total* annual safe yield ultimately set by the court as the appropriate "quantity of pumping from the basin [that] will maintain equilibrium in the aquifer" was an amalgamation of two different components: amounts attributable to "native" water and amounts attributable to "imported" water. Various experts testified that *native* water additions (i.e., water coming into the basin from precipitation and runoff) provided new water to the AVAA basin ranging between 55,000 to 68,000 afy. When "return flows" from that new water were calculated, the PWS contended the *native* safe yield should be set at approximately 82,300 afy for the AVAA basin as a whole. However, various entities also imported additional water into the AVAA, and when that *imported* water (along with *its* return flows) was added to the native supply, the total safe yield for the AVAA basin was determined by the court to be 110,000 afy.

from the AVAA basin during the years 2011 and 2012.[5] Based on the stipulations and evidence presented by numerous parties about the amounts pumped during the relevant time frames, including Phelan's evidence that it pumped 1,053.14 acre-feet in 2011 and 1,035.26 acre-feet in 2012 from the AVAA basin, the court determined how much water the various major stakeholders actually pumped from the AVAA basin in the relevant years. The amounts actually pumped during those sample years exceeded the previously determined safe yield.[6]

Commencement of Phase 5: Federal Reserve Rights and Imported Water Return Flow Rights

The Phase 5 trial bifurcated two issues for the next trial phase: (1) federal reserved water rights, and (2) any claimed rights to recapture and use any return flows from water imported into the AVAA. However, during the evidentiary presentations on the federal reserved water rights, the parties requested a recess of pending proceedings to

---

[5]Initially, the case management order (CMO) for the Phase 4 trial contemplated it would encompass a vast array of issues, including the issue ultimately tried (current groundwater production for the two-year period which preceded the Phase 4 trial), but it also contemplated the trial would litigate each pumper's claimed reasonable and beneficial use of water the water pumped, as well as claimed return flows from imported water and federal reserved rights. However, that CMO subsequently evolved to narrow the issue tried in Phase 4 and provided that "proof of claimed reasonable and beneficial use of the water for each parcel to be adjudicated" would only encompass "the amount of water used by each party and the identification of the beneficial use to which that amount was applied, but will not include any determination as to the reasonableness of that type of use [or] of the manner in which the party applied water to that use ...." The fifth amended CMO ultimately provided the "Phase [4] Trial is only for the purpose of determining groundwater pumping during 2011 and 2012. The Phase [4] Trial shall not result in any determination of any water right, or the reasonableness of any party's water use or manner of applying water to the use. The Phase [4] Trial will not preclude any party from introducing in a later trial phase evidence to support its claimed water rights .... All parties reserve their rights to produce any evidence to support their claimed water rights and make any related legal arguments including, without limitation, arguments based on any applicable constitutional, statutory, or decisional authority."

[6]The court found that, during the sampled years, the parties cumulatively pumped in excess of 120,000 afy even before consideration of the amounts pumped by the "Wood Class," and apparently without consideration of the amount that would be subject to any federal reserved right.

permit further settlement discussions. The parties then met and conducted settlement discussions, and in April 2014, the parties informed the court that the vast majority of the parties had reached a proposed global settlement of their respective groundwater claims. The settlement included agreement on the contours of a basin-wide groundwater management plan to implement a Physical Solution to the AVAA basin's overdraft conditions that accommodated the groundwater rights of the parties to the global settlement.

Although Phelan participated in the settlement negotiations, the parties were unable to reach agreement settling Phelan's claims to water from the AVAA basin.

Trial of Phelan's Preserved Claims

Because the parties were unable to reach a satisfactory agreement to accommodate Phelan's claims to pump water from the AVAA basin for use outside the AVAA, the court set a series of trials in which to litigate and resolve Phelan's claims for relief.

"Stage One": Trial on Phelan's Preserved Claims for Appropriative and Return Flow Rights

The court held hearings and conferences to delineate which of the claims raised by Phelan's cross-complaint should be tried next.[7] The court opined the appropriate scope

---

[7]In its case management statements, Phelan indicated it had abandoned its claim of a prescriptive water right, but had seven remaining causes of action. Phelan identified three key issues that should be litigated in the next stage. First, Phelan asserted it had obtained an appropriative water right to pump from Well 14 as an appropriator of surplus water; it asserted there was a "local area" surplus in the portion of the AVAA where its Well 14 was sited because groundwater levels in the Buttes and Pearland subbasins had not changed significantly since 1951, which it contended showed a lack of overdraft in those two subbasins. Phelan alternatively asserted it was an appropriator for public use of nonsurplus water. Phelan also asserted a form of return flow "rights," arguing that the evidence would show that some of the water drawn *from* the AVAA basin by Well 14 returned *to* the AVAA basin, and that consideration of this return flow should be factored into "the overall water balance with [Phelan] receiving an offset against potentially future assessments or liabilities, anti-export provisions, or otherwise arising from the anticipated physical solution to be fashioned by the Court." (Italics omitted.) Finally, Phelan argued that although the jurisdictional boundaries established for the AVAA excluded Phelan's service area, the hydrogeologic reality was that the aquifer extended eastward (crossing over the AVAA boundaries) to encompass part of Phelan's service area, and

of issues to be tried in the first stage should include (1) whether Phelan could show it had acquired an appropriative water right by showing there was a surplus in the AVAA basin,[8] and (2) whether Phelan could establish a return flow right from native waters that provided some support for Phelan's claims.

Trial on these aspects of Phelan's preserved claims occurred in late 2014. The parties agreed on a set of stipulated facts and exhibits. Phelan also introduced the testimony of two witnesses, including its expert hydrogeologist, Mr. Harder. The court then heard argument on and ultimately granted cross-defendants' motions for judgment. It issued a partial statement of decision on the stage one issues, which found Phelan had no appropriative right to pump from the AVAA basin because Phelan had not satisfied its burden of proof to show there was surplus water available for an appropriative use. The court specifically found the Butte subbasin (where Phelan's Well 14 is located) was adjacent to and hydrologically connected with other parts of the AVAA basin and served as a source of water recharge for the overall AVAA basin. It further found that localized

---

this fact should be accounted for in determining (1) whether Phelan's use of Well 14 water within its service area was subject to any anti-export prohibition and (2) whether Phelan could be credited for recaptured return flows. Thus, it appears Phelan sought trial on its second cause of action (appropriative rights to surplus water), its fourth cause of action (municipal priority to water use as against all nonmunicipal users), its sixth cause of action (declaratory relief regarding return flows from water extracted and distributed by Phelan in its service area), and elements embedded in its eighth cause of action (declaratory relief on the boundaries of the basin).

[8]The parties discussed the relevance of testimony concerning water levels in the Butte subbasin. Specifically, the parties sought to determine whether, in light of the court's decisions in Phase 2 (that there was sufficient hydraulic connectivity within the AVAA aquifer as a whole to obviate the claims that certain sections should be treated as separate basins) and Phase 3 (that the AVAA basin as a whole was in overdraft), Phelan's evidence concerning water levels in one portion of the AVAA (the Butte subbasin where Well 14 is located) was germane to Phelan's attempt to show a surplus existed in the AVAA as whole when it brought Well 14 online. The court observed that Phelan had not previously proffered evidence that the Butte subbasin was a totally separate basin lacking hydrologic connectivity to the overall AVAA basin, and therefore opined that demonstrating surplus for the AVAA as a whole (rather than in a particular section) would be required, but recognized Phelan "may have other evidence [or] may be able to demonstrate, as a matter of law, that it doesn't matter."

variations in groundwater levels within portions of the basin were insufficient to demonstrate there was surplus water in the overall AVAA basin upon which Phelan could acquire an appropriative right to water from the basin. The court also rejected Phelan's sixth cause of action, ruling Phelan had no cognizable right to pump return flows attributable to native waters that recharged the AVAA basin.

Stage Two: Trial of Phelan's Remaining Preserved Claims

The court then scheduled a trial for Phelan's remaining claims for August 2015.[9] Phelan delineated those remaining claims as seeking declarations (1) as to its alleged appropriative rights as a municipal water provider (fourth cause of action), (2) as to its "storage" rights for imported water (fifth cause of action), and (3) as to the alleged unreasonable use of water by other cross-defendants (seventh cause of action). Phelan also sought a determination, on its third cause of action for a Physical Solution, that any Physical Solution should allow Phelan to pump up to 1,200 afy without payment of any Replacement Assessment Fee.[10] Prior to this Stage Two trial, Phelan "reserved" its right to present evidence on its "unreasonable use of water" claim and indicated it would present that evidence at the pending "prove-up" hearings on the proposed Physical Solution. Accordingly, Phelan framed the issues for the Stage Two trial to be limited to whether Phelan had appropriative rights as a municipal water provider and whether any Physical Solution should allocate certain amounts of pumping to Phelan free of any replacement assessment.

---

[9]The court's scheduling order also set an evidentiary hearing on a proposed Physical Solution for the fall of 2015.

[10]Although Phelan also indicated (prior to the Stage Two trial) that it intended to pursue its eighth cause of action for a declaration of the boundaries of the AVGB, it later expressly stated this cause of action did not seek to *revise* the AVAA boundaries established in Phase 1, but was instead limited to seeking a determination that it was not an "exporter" of the water it drew from Well 14.

At this Stage Two trial, Phelan made a brief evidentiary presentation from its expert hydrologist on the claims set for hearing.[11] At the close of Phelan's evidence phase, a PWS party moved for judgment under Code of Civil Procedure section 631.8, but the court deferred ruling on the motion until it could hear further evidence scheduled to be heard during the Phase 6 trial on the Physical Solution.

Phase 6: The Physical Solution

In the spring of 2015, the settling parties presented a stipulation containing a proposed plan, the Physical Solution, for the entire AVAA, which was agreed upon by the vast majority of the parties to the consolidated actions. Phelan was not among the parties to the stipulation. The proposed judgment contained an allocation of the projected safe yield among the numerous parties. Although the proposed judgment did not allocate any share of the available native safe yield to Phelan, it did specify Phelan could continue to pump up to 1,200 afy from Well 14 for use outside the AVAA as long as such pumping did not cause "material injury" to the AVAA and Phelan paid a replacement water assessment for the amounts it extracted from Well 14 and distributed outside the AVAA.

In the fall of 2015, the court held hearings on the proposed Physical Solution. After hearing evidence from a historian on the public notoriety of the overdraft conditions in the area,[12] the court heard evidence from four experts concerning the

---

[11]Harder identified six wells used by Phelan to pump water from the AVGB, although only one of those wells (Well 14) was within the AVAA. He also described the amounts of water Phelan distributed to the portion of their customers who, although outside the AVAA, were atop a portion of the alluvial basin as defined by the Department of Water Resources' Bulletin 118. He also testified Phelan's pumping has had no measurable impact on the groundwater levels within the Buttes subbasin, and that groundwater levels within the Buttes subbasin has remained relatively stable. However, Harder conceded that water pumped from Phelan's wells intercepted water that would otherwise flow as recharge into the AVAA basin.

[12]Dr. Douglas Littlefield, a forensic historian, testified to a long history of published articles and technical studies showing the overdraft of water and resulting diminishing water

proposed Physical Solution. Dr. Dennis Williams, an expert with extensive experience with groundwater hydrology, opined the proposed Physical Solution would bring the AVAA basin back into balance because of its component parts: substantial reductions in pumping by existing users, importation of supplemental water, and the management and monitoring provisions. Charles Binder, a civil engineer who acted as a watermaster for another watershed, similarly testified the provisions of the judgment and proposed Physical Solution would bring the AVAA basin back into hydrologic balance. Two other experts opined the parties who received production rights under the Physical Solution were devoting the water they extracted to reasonable and beneficial uses.

Phelan presented no affirmative evidence during the Phase 6 trial. Phelan's Phase 6 trial brief did assert that, based on the evidentiary record, the court should make numerous modifications to the proposed Physical Solution. Specifically, it argued it should be allowed to pump up to 1,200 afy *without* the replenishment assessment contemplated by the Physical Solution or, alternatively, to pump 700 afy without a replenishment assessment, based on its historical pumping from all its wells (including its wells outside the AVAA boundaries) within the Buttes subbasin and the impacts of its pumping upon water levels within that subunit.[13] It also asserted the judgment should recognize appropriative pumping rights held by Phelan were entitled to be accorded municipal priority under sections 106 and 106.5 of the California Water Code.[14]

---

levels in the areas encompassed by the AVAA (as well as attendant subsidence problems) were well known for decades.

[13]Phelan's Phase 6 trial brief also opposed certain language within the proposed Physical Solution, including characterizing Phelan as an "exporter" of water, and to the ambiguity created by certain "costs" language contained in paragraph 6.4.1.2 of the Physical Solution.

[14]Phelan apparently presented no evidence in support of its claim there was an unreasonable use of water by other cross-defendants and, while Phelan interposed objections to the proposed statement of decision, its objections contained no mention of this claim.

The court's Phase 6 proposed statement of decision concluded, as to Phelan's remaining claims, that Phelan lacked an appropriative right to draw water from the AVAA because the longstanding overdraft conditions in the AVAA basin as a whole meant there was no surplus water available for Phelan to acquire or enlarge an appropriative water right. It further rejected Phelan's return flow claims because such a claim is limited to return flow from imported water, and Phelan never imported water into the AVAA.

The Final Judgment and Adoption of the Physical Solution

The court's final judgment, which incorporated determinations from prior phases, found the collective demands by those holding water rights in the AVAA basin exceeded the available total safe yield of 110,000 afy (comprising a native safe yield of 82,300 afy and the balance coming from imported supplemental water supplies) for the entire basin, and that a comprehensive adjudication of all of the water rights within the AVAA basin and a water resource management plan was required to prevent further depletion of and damage to the AVAA basin. The court found (1) the United States had produced substantial evidence establishing a federal reserved water right, (2) the PWS had produced substantial evidence showing they had acquired a prescriptive right as against certain parties who had not joined in the stipulated judgment, and (3) Phelan had not shown it had acquired an appropriative water right (or any other right) in the AVAA basin's safe yield. Specifically, the court noted that, while Phelan was an overlying landowner in the AVAA basin by virtue of its ownership of the parcel on which it operated Well 14, the water it drew from that parcel was not used for that parcel but was instead used to service its customers outside the AVAA. Its final judgment approved Phelan's ability, as granted by the approved Physical Solution, to pump up to 1,200 afy subject to the payment of a replacement assessment, and found Phelan had no right to pump water from the AVAA except under the terms of that Physical Solution.

The court further found that the stipulating "Landowner Parties" and "Public Overliers" had established they possessed overlying rights to the basin's native safe yields by producing evidence of the amounts of the basin groundwater they actually used, that such amounts were reasonable and beneficial uses of such water, and that the total amounts so used exceeded the total native safe yield.[15] The court also granted final approval to a settlement for the "Small Pumper Class," which allocated certain production rights to members of that class.

The court found that, because the native safe yield was well below the amounts used for reasonable and beneficial purposes by those with overlying, prescriptive, or reserved rights, it was necessary to allocate the native safe yield among these rights holders to protect the AVAA basin for existing and future users. The court concluded the evidence presented during Phases 4 and 6 supported the conclusion that the Physical Solution, which required these rights holders to severely reduce the amount of water they used and created an overarching water management plan for the AVAA basin, fairly allocated the available water supplies and made the maximum reasonable and beneficial use of the native safe yield in a manner which would protect the AVAA basin for existing and future users while preserving the ability of existing rights holders to continue using the available water.

---

[15]The court made similar findings as to a group of nonstipulating landowner parties who claimed overlying rights in the basin's groundwater by proof of their land ownership or other interest in the basin. While this group was not signatories to the original settlement, they supported the proposed judgment and Physical Solution and agreed to reduce production under paragraph 5.1.10 of the Physical Solution to certain specified amounts. The court found these parties had shown they had an overlying right to basin water, that they had reasonably and beneficially used basin water, and that the amounts they were allocated under the Physical Solution was a severe reduction of their historical and current uses and represented amounts they applied to reasonable and beneficial uses.

DISCUSSION

I. Substantial Evidence Supports the Conclusion the Physical Solution Will Bring the AVAA Basin Into Balance*

A court may impose a physical solution to protect an aquifer from the deleterious effects of overdrafting the aquifer. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288.) "A physical solution is an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources in a particular area, consistent with the constitutional mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this state's limited resource." (*California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) A court's physical solution can reasonably regulate the use of the water by the respective rights-holders provided its provisions are "adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction ...." (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383 (*Peabody*).) A physical solution must consider the rights and priorities of the vested rights holders in light of the constitutional principle requiring that available water be put to beneficial use to the fullest extent possible. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1250 ["although it is clear that a trial court may impose a physical solution to achieve a practical allocation of water to competing interests, the solution's general purpose cannot simply ignore the priority rights of the parties asserting them. [Citation.] In ordering a physical solution, therefore, a court may neither change priorities among the water rights holders nor eliminate vested rights in applying the solution without first considering them in relation to the reasonable use doctrine"].)

Phelan argues on appeal there is no substantial evidence to support the trial court's finding that the adopted Physical Solution would bring the AVAA into hydrological

---

*See footnote, *ante*, page 1.

balance and thereby "prevent its ultimate destruction." (*Peabody*, *supra*, 2 Cal.2d at p. 383.)

> "Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that ... the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. (*Crawford v. Southern Pacific Co.* (1935) 3 Cal.2d 427, 429.) We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." (*Jessup Farms v. Baldwin* (1983) 33 Cal.3d 639, 660.)

The testimony of a single witness, unless it is impossible or inherently improbable, will be sufficient to support the challenged findings. (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465–466.) When a party asserts on appeal that a judgment lacks substantial evidentiary support, it is that party's burden to summarize the evidence on that point—both favorable and unfavorable—and then to demonstrate how and why it is insufficient. (*Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409.)

Phelan's insufficient evidence claim rests principally on the contention the testimony of two experts, which was offered by the proponents of the Physical Solution in Phase 6 of the underlying trial, does not provide sufficient evidence the Physical Solution would bring the AVAA into balance. The first expert, Mr. Binder, had extensive training and experience in water resource management and who (among other qualifications) served as the watermaster and the watermaster engineer to administer and enforce a similar physical solution for the Santa Margarita Watershed. Binder premised his opinion on a review of the terms of the proposed Physical Solution, the technical reports from a variety of agencies, and the court's orders and decisions in the prior phases of the AVGC litigation. Based on his review of all these materials, Mr. Binder opined (1) the Physical Solution would result in reduced groundwater production to a level equal to

the amount of the safe yield resulting in the basin being stabilized into hydrologic balance, (2) the native safe yield plus available supplemental water supplies would be sufficient to meet total current water requirements under the allocations contemplated in the Physical Solution, and (3) the proposed judgment and Physical Solution would create a functional structure for administering the judgment and managing the groundwater basin. Binder noted the management structure included a watermaster and watermaster engineer to manage the groundwater basin, a financial plan to fund the management structure, flexible management tools to manage the basin, and retention of court jurisdiction to enforce or modify the judgment.

Dr. Williams, an expert geologist, hydrogeologist and groundwater hydrologist, and an expert on groundwater modeling and management, also concluded the proposed Physical Solution would bring the AVAA basin into hydrologic balance. Dr. Williams formed his opinion using a computer model created by the United States Geological Survey, known as a "distributed parameters" model, which he used to assess the impacts of pumping and recharging within the mapped area.[16] Dr. Williams used the model to project the impacts on the AVAA's hydrologic balance over the next 50-year period using multiple different scenarios. His first two scenarios (scenarios 1 and 1A) modeled and evaluated the long-term impacts on the AVAA basin *without* reduced pumping by

---

[16]Williams explained that, before the "distributed parameters" computer model was available, hydrologists used a "lumped parameter" model that treated the entire basin as a giant bathtub in which total inflows and outflows were used to assess storage changes. In contrast, the distributed parameters model creates a fine mesh (comprising over 60,000 individual micro-parcels or "cells" measuring 1,000 by 1,000 meters per cell with each cell having several vertical layers to reflect the depths of the relevant geological features), which was overlaid on the AVAA basin to more finely evaluate the impacts of pumping and recharge and "solve" water balances for each of the cells. The United States Geological Survey model covered a much greater area than the AVAA, so only the cells relevant to evaluating the proposed Physical Solution (primarily the cells covering the alluvial sediments in the AVAA) were activated for purposes of running the computer modeling. The model allowed Williams to input the amount of pumping for each individual pumper (whether reduced or unreduced) and assign it to a particular "cell" of the map where that pumper was operating the specific pump.

current users as contemplated by the proposed Physical Solution: scenario 1 assumed unreduced current pumping with aquifer recharge under drought conditions (where the rain and imported water recharging the AVAA basin was constricted), while scenario 1A again assumed unreduced current pumping but under average conditions where rain and imported water recharged the aquifer with the 110,000 afy of safe yield. Based on the model, he concluded either scenario would cause adverse impacts on the AVAA basin.

Dr. Williams then used the computer model to calculate the projected long-term impacts on the AVAA basin if the reduced pumping (and other measures) contemplated by the proposed Physical Solution were adopted using two more scenarios (scenarios 2 and 2A), again using parallel aquifer recharge assumptions under drought conditions (scenario 2) and under average recharge conditions (scenario 2A). Dr. Williams concluded that implementing the terms of the Physical Solution, in which existing rights holders reduced their pumping over a specified period, *would* stabilize the AVAA's hydrological balance under either scenario 2 or 2A.

Dr. Williams subsequently ran a computer modeling (which he denominated as scenario 2B) to simulate the impact on the AVAA of Phelan's pumping from Well 14 of 1,200 afy under the average recharge conditions employed in scenario 2A. He concluded such pumping from Phelan's Well 14 would cause the AVAA to have a net loss to the AVAA groundwater supplies of 700 afy.

The testimony of Binder and Williams provides ample evidence to support the finding the Physical Solution prevented the "ultimate destruction" of the AVAA basin while providing protections for the parties with paramount rights to substantially enjoy the available supplies in that basin. (*Peabody*, *supra*, 2 Cal.2d at p. 383.) However, Phelan asserts Dr. Williams's testimony must be disregarded in evaluating the evidentiary support for that finding because the methodology employed in his computer modeling was flawed. Specifically, Phelan asserts (1) not all of the cells in the United States Geological Survey model within the AVAA were "activated," (2) there were no

"calibration wells" in the area near Phelan's Well 14, and (3) the modeling of the impact of pumping from Well 14 was done by moving its location to the nearest "active" cell in order to simulate such impacts. Accordingly, argues Phelan, Dr. Williams's testimony cannot provide substantial evidence for the findings the Physical Solution would stabilize the AVAA basin and bring it into hydrologic balance because the model did not "accurately depict the workings of the groundwater basin." We reject Phelan's claim that Williams's opinion must be disregarded in assessing whether substantial evidence supports the trial court's finding for two reasons. First, Phelan acknowledges its motion to strike Williams's testimony, which appears to have been based on essentially the same alleged imperfections in the modeling, was denied by the trial court. Phelan makes no effort on appeal to satisfy its burden of showing the denial of its motion to strike Dr. Williams's testimony was an abuse of discretion. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773 ["Except to the extent the trial court bases its ruling on a conclusion of law (which we review de novo), we review its ruling excluding or admitting expert testimony for abuse of discretion"].) Because we may not interfere with the broad discretion accorded to trial courts in admitting expert testimony absent a showing such discretion was clearly abused (*People v. Bui* (2001) 86 Cal.App.4th 1187, 1196), and Phelan has made no showing such discretion was clearly abused here (cf. *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 281), we must presume the ruling on the motion to strike was properly denied and that the trial court therefore properly admitted and considered his testimony. Second, while Phelan makes multiple suggestions on appeal on how Williams's computer modeling could have been more precise or comprehensive, Phelan cites no evidence those suggested improvements to the model (even if implemented) would have materially changed the results reached by the model (or Dr. Williams's opinion based thereon) that the Physical Solution would stabilize the AVAA basin's hydrological balance under either scenario 2

or 2A, or would have altered his opinion that pumping from Phelan's Well 14 would cause the AVAA to have a net loss to the AVAA groundwater supplies of 700 afy.

Because Phelan has not demonstrated that admitting Dr. Williams's testimony was an abuse of discretion, nor does the record contain evidence that any imperfections in the model so materially impacted his conclusions that his testimony (as admitted) should be entirely disregarded on appeal, Dr. Williams's opinion provides ample support for the judgment. Other courts that have considered arguments attacking an expert's testimony, analogous to those mounted by Phelan here, have similarly rejected such arguments on appeal. For example, in *Corona Foothill Lemon Co. v. Lillibridge* (1937) 8 Cal.2d 522, the appellants challenged whether there was substantial evidence for the trial court's determinations of the boundaries of the aquifer, and supported that challenge by detailing the evidence at trial supporting a contrary conclusion. The court, noting there was "voluminous evidence of a highly conflicting nature [and] [w]ell qualified witnesses on each side testified concerning the geology of the area, its hydrology, and the relative permeability of soils in Temescal wash, on Norco mesa, and on the Corona slope" (*id.* at p. 527), rejected the appellate claim. The *Corona* court observed the evidence created "... substantial points of agreement and also decided points of material disagreement [among the experts on] whether the entire Corona area constitutes a single underground water basin or reservoir" (*id.* at p. 528) but rejected the appellants' claim because, while the appellants' contrary claims had evidentiary support, "... there is in contradiction of [the appellants'] evidence ample proof which, if believed by the trial court, supports its conclusion that the underground reservoir embraces the entire Corona area." (*Ibid.*; accord, *Allen v. California Water and Tel. Co.* (1946) 29 Cal.2d 466, 481 [expert testimony on absence of surplus for appropriation; court rejects substantial evidence challenge because "the trial court's findings have substantial evidentiary support in the testimony of [expert] Lee and other witnesses for plaintiffs; [the appellate] attacks made by defendant upon the testimony of Mr. Lee go only to its credibility and weight; and ...

these are matters committed to the trier of the facts for determination in the case of an expert as well as of lay testimony"].)

Moreover, even assuming Phelan *had* adequately carried its appellate burden demonstrating it was a clear abuse of discretion to admit Dr. Williams's testimony, the testimony of Mr. Binder would alone provide substantial evidentiary support for the finding the panoply of provisions in the Physical Solution would bring the AVAA into hydrological balance. Although Phelan attacks Binder's opinions on appeal,[17] Phelan did not move to strike Binder's testimony below, nor does it articulate (apart from a peremptory allegation that his testimony must be deemed "irrelevant") why his testimony does not provide substantial evidence to support the trial court's conclusion the Physical Solution would protect the AVAA basin from further degradation. Because the testimony of a single witness (unless it is impossible or inherently improbable) is sufficient to support the challenged findings (*Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.*, *supra*, 196 Cal.App.4th at pp. 465–466), and Phelan has not shown Binder's opinion was either impossible or inherently improbable, Binder's opinion alone provides substantial evidentiary support for the conclusion the Physical Solution would bring the AVAA into hydrologic balance.

Phelan appears to argue our ordinary assessment of whether there is any substantial evidence to support the findings below (*Crawford v. Southern Pacific Co.*, *supra*, 3 Cal.2d at p. 429), and which requires us to view the evidence in the light most favorable to the judgment with every reasonable inference drawn in favor thereof (*Jessup Farms v. Baldwin*, *supra*, 33 Cal.3d at p. 660), is inapplicable here because Phelan contends the final statement of decision affirmatively shows the court's determinations

---

[17]Phelan points out, for example, that certain numbers used in Binder's analysis changed between the time he gave his deposition and the time of his trial testimony, and also claims Binder's analysis considered nongroundwater sources in alleged contravention of a limiting determination from the Phase 1 trial.

were *not* based on a weighing of the conflicting evidence. Specifically, Phelan argues the final statement of decision does not catalogue each item of evidence accepted or rejected by the court (and the rationale for each such acceptance or rejection) in reaching its final determinations, and that this lacuna shows the court reached its determinations without weighing the evidence. Based on this predicate—the claim the record affirmatively shows the decision was *not* based on a weighing of the evidence—Phelan asserts we are precluded from employing the deferential substantial evidence standard to review its decision under *Kemp Bros. Construction, Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474 (*Kemp*) and *Affan v. Portofino Cove Homeowners Assn.* (2010) 189 Cal.App.4th 930 (*Affan*).

However, Phelan's contention that alleged deficiencies in the final statement of decision requires application of some standard of review other than the deferential substantial evidence standard is first raised in Phelan's reply brief. Ordinarily, "'[p]oints raised for the first time in a reply brief will ... not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument.' [Citation.] ... '"Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before."' [Citation.]" (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Even assuming Phelan had preserved this argument, it rests on a predicate that misconceives what is required in a statement of decision. Phelan's argument under *Kemp* and *Affan* is predicated on its assertion that a statement of decision which does not contain a detailed discussion of all of the evidence *and* a discussion of why the court chose to credit some evidence while rejecting other evidence affirmatively shows the

court did *not* weigh the evidence in reaching its decision. However, a statement of decision is required only to set out ultimate findings rather than evidentiary ones. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1125.) A trial court "'is not required to respond point by point to the issues posed in a request for statement of decision. The court's statement of decision is sufficient if it fairly discloses the court's determination as to the ultimate facts and material issues in the case.' (*Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1379–1380; [citation].) 'When this rule is applied, the term "ultimate fact" generally refers to a core fact, such as an essential element of a claim.' (*Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513.) 'Ultimate facts are distinguished from evidentiary facts and from legal conclusions.' (*Ibid.*) Thus, a court is not expected to make findings with regard to 'detailed evidentiary facts or to make minute findings as to individual items of evidence.' (*Nunes Turfgrass, Inc. v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1525.)" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983.) Phelan's argument "would require the court to make detailed findings of evidentiary facts as to each individual piece of evidence relied upon by the trial court. Under the law, [Phelan is] not entitled to such a detailed analysis." (*People v. Dollar Rent-A-Car Systems, Inc.* (1989) 211 Cal.App.3d 119, 128.) Here, the statement of decision fairly disclosed the court's determination as to the ultimate facts and material issues in dispute in each phase of the proceedings. Accordingly, we reject Phelan's claim the statement of decision was too inadequate to warrant review under the substantial evidence standard.[18]

---

[18]This analysis renders moot Phelan's reliance on *Kemp* and *Affan*. In both of those cases, the record affirmatively showed the trial court's judgment was based on reasons unrelated to an assessment of the conflicting evidence. In *Kemp*, for example, a prime contractor sued a subcontractor for breach of contract and sought a pretrial right to attach order against the subcontractor's accounts receivable, which required an affirmative showing by the prime contractor of the "probable validity" of its breach of contract claim. The court granted the attachment order, but the minute order and reporter's transcripts showed the court granted the order *not* because the plaintiff had affirmatively shown the probable validity of its claim, but because it ruled the defendant was barred (by collateral estoppel principles) from contesting the

Phelan's final attack on the evidentiary support for adopting the Physical Solution appears to argue the evidence was insufficient because there was no evidence Phelan's pumping "substantially harms the AVAA such that Phelan should be required to pay a replacement assessment" for the amounts it pumps. However, there is substantial evidence Phelan's pumping harms the AVAA basin's water balance. Dr. Williams testified Phelan's pumping diminished the AVAA water balances by 700 AF each year, and Phelan's own expert agreed Well 14 extracts more water *from* the AVAA basin than was being returned *to* the AVAA basin from return flows from those extracted waters. This final argument by Phelan appears to suggest that, as long as the negative impacts of its pumping on the AVAA basin do not *substantially* harm the AVAA basin, there is no evidence supporting the Physical Solution's regulation of its pumping. However, Phelan cites no authority that a court lacks evidentiary support for a Physical Solution merely because any *one* party regulated thereunder can argue that exempting *its* pumping from its terms would only minimally diminish the effectiveness of the Physical Solution. (Contra, *City of Lodi v. East Bay Mun. Utility Dist.* (1936) 7 Cal.2d 316, 341 [trial court has power and duty to admit evidence relating to possible physical solutions and "to enforce such solution regardless of whether the parties agree"].) Indeed, we believe this

---

plaintiff's breach of contract claim. (*Kemp*, *supra*, 146 Cal.App.4th at pp. 1476–1481.) The appellate court, concluding the trial court erred by using collateral estoppel on the probable validity issue, also rejected invoking substantial evidence review to affirm the determination on the probable validity issue because it was clear the court never considered or weighed any evidence once it determined (erroneously) collateral estoppel obviated examination of that issue. (*Id.* at pp. 1477–1478.) Similarly, in *Affan*, *supra*, 189 Cal.App.4th 930, the trial court rejected an owner's claim of negligence against a homeowners association because it apparently misconstrued a fact-based "judicial deference" defense (available to associations under *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249) as a blanket immunity defense (*Affan*, *supra*, at pp. 938–940), and therefore never examined whether the requisite facts had been established to invoke that judicial deference defense. (*Id.* at pp. 940–944.) Unlike those cases, the statement of decision here does not show the approval of the Physical Solution was based on matters dehors the evidence (as in *Kemp*) or on erroneous legal standards (as in *Affan*), but was instead based on correct legal considerations and after considering the evidence. Accordingly, neither *Kemp* or *Affan* is relevant here.

argument (if credited) would eviscerate the ability of a court to adopt *any* basin-wide physical solution: if any single water rights holder could bar adoption of a proposed physical solution unless it was exempted from it by asserting its specific unconstrained pumping would have limited impact on the effectiveness of its remaining regulations, *any* proposed physical solution could be exposed to a "death by a thousand cuts" because each objecting water claimant could likewise claim exemption from its regulation under the "individual de minimus impacts" argument.

We conclude Phelan has not carried its appellate burden of showing there was inadequate evidence to support the conclusion the Physical Solution adequately met the twin goals of protecting the paramount rights of vested water rights holders while preventing the ultimate destruction of the AVAA aquifer (*Peabody*, *supra*, 2 Cal.2d at p. 383), and we therefore reject Phelan's first argument on appeal.

II. The Trial Court Correctly Rejected Phelan's Fourth Cause of Action Asserting It Had Acquired Water Rights as a "Public Use Appropriator"

Phelan's cross-complaint, in addition to asserting it had acquired protectable water rights either as an appropriator (if surplus water existed) or by prescription (if there was not surplus water), also asserted it had "rights to pump water from the Basin to meet its municipal water demands ... as a matter of law and public policy" under California Water Code sections 106 and 106.5, which Phelan contended provided it with a "prior and paramount right to Basin water as against all non-municipal uses." The trial court's final statement of decision concluded Phelan had not acquired *any* right, whether appropriative or otherwise, to AVAA basin groundwater. On appeal, Phelan appears to assert the "public use" doctrine and policies embodied in Water Code sections 106 and 106.5 confer on Phelan a right—as a municipal appropriator for public use—to pump water from the AVAA for municipal purposes *regardless* of whether a surplus existed when it began pumping from Well 14.

California's "dual system of water rights"[19] essentially provides two sources by which water rights in *surface* waters can be acquired: by riparian rights holders who have first priority to the available water for riparian uses, or by appropriation of water for nonriparian uses when there is water in surplus beyond that used by first priority users. (See generally *Santa Barbara Channelkeeper v. City of San Buenaventura* (2018) 19 Cal.App.5th 1176, 1183.)

> "Similar principles govern rights to water in an underground basin. First priority goes to the landowner whose property overlies the groundwater. These 'overlying rights' are analogous to riparian rights in that they are based on ownership of adjoining land, and they confer priority. [Citation.] Surplus groundwater also may be taken by an appropriator, and priority among 'appropriative rights' holders generally follows the familiar principle that '"the one first in time is the first in right."' (*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th] at p. 1241.) With groundwater there is an exception, however, that gives rise to a third category of rights. Under certain circumstances, an appropriator may gain 'prescriptive rights' by using groundwater to which it is not legally entitled in a manner that is '"actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted for the statutory period of five years, and under claim of right."' (*Ibid.*)" (*Santa Barbara Channelkeeper v. City of San Buenaventura*, *supra*, at p. 1184.)

Phelan does not assert its pumping from Well 14 is pursuant to the exercise of rights it holds either as an overlying landowner or by prescription. Accordingly, assuming the court correctly rejected Phelan's claim there was surplus water upon which Phelan could have acquired protectable rights in the final recognized category of water rights (i.e., as an appropriator of surplus water), Phelan lacks any cognizable groundwater

---

[19]Although courts generally refer to the "dual system" of water rights, the courts have acknowledged that "California's water rights system is not really dual but is instead tripartite, because some pueblo rights superior to riparian or appropriative rights exist." (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237 Cal.App.4th 411, 423, fn. 3.) Because the pueblo rights overlay is not implicated by Phelan's appeal, we employ the "dual system" nomenclature and principles in evaluating its appeal.

rights in the AVAA.[20] Phelan's "public use appropriator" argument instead posits there is *another* possible source for acquiring protectable rights to groundwater: that even *without* a surplus upon which Phelan could premise a claim as an appropriator, Water Code sections 106 and 106.5 and a variety of cases have created a public-policy-based alternative upon which Phelan could have acquired a protectible interest in the aquifer.

We conclude neither Water Code sections 106 and 106.5 nor the cases cobbled together by Phelan provides support for this novel theory that a pumper for municipal purposes can tap into an overdrafted aquifer and in doing so acquire protectable water rights in that aquifer. While the statutes cited by Phelan are declarative of general public policy,[21] Phelan has cited no case (nor have we located any) in which those sections were employed to acquire a water right that would not otherwise have been acquired under the laws governing acquisition of water rights by overlying, appropriative, or prescriptive users. Instead, those sections appear to only be relevant to assigning and protecting priorities among *existing* water rights holders. (See, e.g., *Deetz v. Carter* (1965) 232 Cal.App.2d 851 [dispute among riparian rights holders resolved with domestic user given priority over irrigator].) Because those sections appear limited to assigning and protecting priorities, and the same legislative enactment which created those includes the express declaration that "[i]n the enactment of this code the Legislature does not intend thereby to effect any change in the law relating to water rights" (Wat. Code, § 103), we reject Phelan's argument these sections create a special avenue by which municipal water suppliers can acquire a correlative appropriative right in an overdrafted aquifer.

---

[20]In the unpublished portions of this opinion, we conclude the trial court did not err when it concluded there was no available surplus upon which Phelan could premise a claim as an appropriator.

[21]Water Code section 106 merely states that it is "the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." Section 106.5 states only that it is "the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses."

The cases cited by Phelan are equally inapposite to its argument. For example, while Phelan relies heavily on *Peabody*, *supra*, 2 Cal.2d 351 for its "appropriat[ion] for public use" argument, *Peabody*'s legal relevance is limited. There, the riparian owners sued a public agency for impairing their rights to river water after the agency had completed a dam and began impounding river water (for diversion to municipal uses), thereby reducing the water available to the downstream riparian owners. The trial court concluded the downstream owners were entitled to all of the waters from the stream and enjoined the agency from impounding waters behind the dam. (*Id.* at pp. 358–363.) The *Peabody* court merely concluded that, because the public use had commenced before the plaintiffs commenced their action to establish their water rights, the plaintiffs could not enjoin the agency from continuing to operate the dam, but were instead limited to other remedies, such as recovering any appropriate damages or to a physical solution minimizing or eliminating any damages otherwise recoverable. (*Id.* at pp. 377–380.) We conclude *Peabody* does not hold a public agency can *acquire* an appropriative water right merely by constructing and operating facilities diverting water for public use, but instead merely delimits the *remedies* which might be available when such activity by the public agency injures the rights held by paramount water rights holders.[22]

The other cases relied on by Phelan are equally inapposite. (See, e.g., *Tulare Dist. v. Lindsay-Strathmore Dist.* (1935) 3 Cal.2d 489, 535–538 [discussing availability of *injunctive* relief against public use appropriator]; *Hillside Water Co. v. City of Los Angeles* (1938) 10 Cal.2d 677, 688 [same]; *Wright v. Goleta Water Dist.* (1985) 174 Cal.App.3d 74, 90 ["Intervention of a public use does not bar suit by the owner of a water

---

[22]*Peabody* is also factually distinguishable. There, the agency had already completed a dam and began impounding river water before the riparian owners filed suit to establish their paramount water rights. (*Peabody*, *supra*, 2 Cal.2d at p. 377.) Here, while Phelan had acquired the parcel on which it constructed Well 14 before commencement of the AVGC litigation, the litigation commenced before it began operating its well. Thus, unlike *Peabody*, the public use here did not commence until *after* the action to establish water rights in the AVAA was underway.

right; it merely limits his remedy to damages in place of an injunction"].) Neither these cases, nor Phelan's remaining authorities, provides any additional support for its claim that the municipal priority sections of the Water Code create an independent avenue for acquiring water rights in an overdrafted aquifer.[23]

We conclude neither the cited Water Code sections nor the case law supports Phelan's argument a public agency may acquire appropriative rights in water from an aquifer absent a surplus in that aquifer to which appropriative rights can attach.

III. The Phased Decisional Procedure Did Not Deprive Phelan of Due Process*

Phelan appears to argue it was deprived of its due process rights because of the order in which issues were resolved in the trial court's phased proceedings. Phelan specifically asserts the court erred when it determined (during the Phase 3 trial) the AVAA basin was in overdraft while deferring the subsidiary determination of whether the water use by all water users in the AVAA basin (whether overlying owners, prescriptive rights holders, or prior appropriators) were for reasonable and beneficial uses. This alleged error, asserts Phelan, deprived it of its due process right to show there was surplus water upon which Phelan could premise its claim to an appropriative water right. Phelan also appears to argue the court erroneously placed on Phelan the burden to show there was unreasonable water uses by claimants with priority over Phelan that

---

[23]For example, Phelan states that "'[p]ublic use of percolating water is a nonoverlying use, whether the lands that receive such public service are overlying lands ***or whether they are located outside of the ground-water area. Such public use is therefore an appropriative use of the water.***'" (Quoting Hutchins, The California Law of Water Rights (1956) p. 458, italics and boldface supplied by Phelan.) While this accurately describes what *is* an "appropriative use," it is an excerpt taken from Hutchins's overall discussion on the "Appropriation of Surplus Percolating Waters," which cautions that "[i]t is surplus or excess waters above the quantities to which the paramount rights of the overlying owners attach that are subject to appropriation for nonoverlying uses." (*Id.* at p. 454.) Thus, Hutchins's description of one *type* of appropriative use (public use outside the groundwater area) does not obviate the predicate *for* acquiring protectable appropriative user rights: the *existence* of surplus water above that water which is subject to paramount rights holders.

*See footnote, *ante*, page 1.

might have (if eliminated) provided surplus water available for appropriation by Phelan. Before we can evaluate Phelan's claims of procedural error, we must outline the substantive law the trial court was required to apply in the proceedings below.

A. General Principles: Overlying/Appropriative/Prescriptive Rights, the Significance of "Surplus" and the "Reasonable and Beneficial Use" Limitations on Water Use

As previously discussed, California's "dual system of water rights" in water courses contemplates two sources by which water rights can be acquired: by riparian rights (water rights held by virtue of owning land adjacent to or through which flowing water passes to use the water for such owned lands) or by appropriative rights (water rights held from diverting and using such water for the benefit of noncontiguous lands). (*Light v. State Water Resources Control Bd.* (2014) 226 Cal.App.4th 1463, 1477–1478.) As between riparian rights holders and appropriative rights holders, the former group has paramount priority to the available water in times of shortages. (*Id.* at p. 1478.)

Analogous principles apply to water from aquifers: rights can be held by an overlying landowner (who has paramount priority to use the water to benefit the owned land analogous to a riparian owner) or by an appropriator if there is surplus water above the needs of paramount claimants. (See generally *Santa Barbara Channelkeeper v. City of San Buenaventura*, *supra*, 19 Cal.App.5th at pp. 1183–1184.) In the case of aquifers, however, there is an exception giving rise to a possible third category of rights: an appropriator may (under certain circumstances) gain "prescriptive rights" by using groundwater to which it was not legally entitled if the ordinary elements of prescription are satisfied. (*Ibid.*)

The key issue in deciding whether a party has acquired a protectable *appropriative* right is the existence of a "surplus," i.e., whether there was water beyond the amounts needed by paramount rights holders. (*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th at pp. 1240–1242 ["'Any water not needed for the reasonable beneficial use of

those having prior rights is excess or surplus water and may rightly be appropriated on privately owned land for non-overlying use, such as devotion to public use or exportation beyond the basin or watershed'"].) The converse concept is overdraft: when the withdrawals from the aquifer exceed the available recharge, there is no surplus but there is instead overdraft. (*City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d at pp. 277–278, disapproved on other grounds in *City of Barstow*, *supra*, at p. 1248 ["Overdraft commences whenever extractions increase, or the withdrawable maximum decreases, or both, to the point where the surplus ends. Thus, on the commencement of overdraft there is no surplus available for the acquisition or enlargement of appropriative rights. Instead, appropriations of water in excess of surplus then invade senior basin rights"].)

An overlay to this dual system for defining water rights is a key limiting principle: the rule of reasonableness. (*Santa Barbara Channelkeeper v. City of San Buenaventura*, *supra*, 19 Cal.App.5th at p. 1184.) There is an "overriding constitutional limitation that the water be used as reasonably required for the beneficial use to be served." (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 105.) The rule of reasonableness means that paramount rights holders, while entitled to priority for water devoted to their reasonable and beneficial uses, may not be so profligate with their uses of available water that they deprive others of water that would otherwise be "surplus" and hence available for appropriation. As articulated by *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908:

> "[I]t is now clear that an overlying owner or any other person having a legal right to surface or ground water may take only such amount as he reasonably needs for beneficial purposes. [Citations.] Public interest requires that there be the greatest number of beneficial uses which the supply can yield, and water may be appropriated for beneficial uses subject to the rights of those who have a lawful priority. [Citation.] *Any water not needed for the reasonable beneficial uses of those having prior rights is excess or surplus water* ..., [which] water may rightfully be appropriated

on privately owned land for nonoverlying uses, such as devotion to a public use or exportation beyond the basin or watershed." (*Id.* at pp. 925–926, italics added.)

B. Analysis

Phelan's due process claim on appeal, while imprecise, appears to have two embedded claims of prejudicial error. First, Phelan argues it was error to determine during the Phase 3 proceedings that the AVAA basin was in overdraft based on a comparison of current extractions against the average safe yield, while bifurcating and deferring to later stages whether the current extractions by all other water users in the AVAA basin qualified as reasonable and beneficial uses for such extracted water. Second, Phelan appears to argue the trial court's delimitation of the issues determined in Phase 3 somehow foreclosed Phelan from proving its claim that there was (or could have been) a surplus which Phelan could pump as an appropriator, and erroneously placed on Phelan the burden of showing there was a surplus available for appropriation by Phelan.

A trial court has discretion to determine the order in which claims or issues are bifurcated and determined, and the selection and scheduling of those phased determinations will not be disturbed absent an abuse of that discretion. (See generally *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 353; *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 163.) The issue bifurcated and resolved in Phase 3 was a core issue common to all of the various actions—whether the AVAA basin was currently in a state of overdraft based on current extractions in light of the safe yield of the aquifer such that judicial intervention was required to provide for managing the aquifer and protecting it against further degradation. We cannot conclude that selecting this core issue for resolution at this earlier stage—whether the AVAA basin *was* in overdraft—was an abuse of discretion.

Indeed, Phelan does not contend on appeal that *selecting* "overdraft" as the issue to be examined in Phase 3 was an abuse of discretion. Instead, Phelan appears to assert the court should have employed a different *metric* for the Phase 3 "overdraft"

determination. Rather than comparing safe yield to current *actual* extractions from the AVAA basin, Phelan argues the court should instead *also* have made the separate determination as part of the Phase 3 trial on whether these actual extractions *exceeded* withdrawals devoted to reasonable and beneficial uses. Phelan contends on appeal that only after the court decided whether "all pumpers [from the AVAA] were pumping for reasonable and beneficial uses" could it then decide whether such pumped amounts were above the safe yield (overdraft) or below the safe yield (surplus). Phelan therefore argues it was an abuse of discretion to defer examining the separate issue of whether current actual extractions exceeded the amounts reasonably and beneficially used by the paramount rights holders.

However, there is no indication Phelan timely objected to the issues as delimited for the Phase 3 trial.[24] Prior to the Phase 3 trial, the court (in connection with its order consolidating all pending actions concerning water claims to the AVAA basin,) ordered a case management conference to hear argument concerning the sequencing of common issues to be heard at the next phase, and proposed the issues for the Phase 3 trial would be limited to "safe yield" and "overdraft" while numerous other issues (including "reasonable and beneficial use of water") would be deferred for later determination. Phelan apparently concurred with the proposal that Phase 3 be focused on "a determination of Basin characteristics including its safe yield and overdraft (past or present)," and there is no suggestion Phelan objected to deferring numerous other questions—including questions about reasonable and beneficial use—to subsequent

---

[24]Although Phelan's reply brief on appeal asserts it did lodge an objection, Phelan's citations to the record rely solely on its objections to the proposed statement of decision following trial of Phelan's second and sixth causes of action, which resolved Phelan's claims for appropriative and return flow rights long after Phase 3 had been concluded. Phelan interposed no timely objection, prior to the Phase 3 trial, that the issues of safe yield and overdraft necessarily required a concurrent determination *during that phase* of whether the water being extracted was being devoted to reasonable and beneficial uses.

phases.[25] Indeed, rather than objecting or contending there might be evidence showing the AVAA was *not* in overdraft, Phelan's trial brief for Phase 3 seemed affirmatively to assert the subbasin most relevant to Phelan (i.e., the Butte subbasin in the southeast portion of the AVAA where Well 14 was operating) *was* "in overdraft or trending toward overdraft."[26] Finally, the record is devoid of any suggestion Phelan sought to proffer evidence, during this (or any other) phase, that actual extractions exceeded reasonable and beneficial uses.[27] Because there is no indication Phelan timely objected to the issues as delimited for the Phase 3 trial, it may not argue for the first time on appeal that the discretionary determination on the scope of issues to be resolved in Phase 3 was an abuse of the trial court's discretion. (See generally *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885–886; *Consolidated World Investments, Inc. v. Lido Preferred Ltd.* (1992) 9 Cal.App.4th 373, 382.)

---

[25]The court, after several case management hearings, eventually ordered the Phase 3 trial would examine whether the basin was in overdraft and specified it "does [not] expect to hear evidence of individual pumping of water by any party within the basin; rather, it expects to hear evidence concerning total pumping and total recharge from all sources." That same order advised that "[a]ny party requiring further clarification of the issues in this third phase of trial is invited to request such clarification." Phelan cites nothing suggesting it objected, sought clarification, or otherwise sought to inject the "reasonable and beneficial use" issue into Phase 3.

[26]Phelan's Phase 3 trial brief stated it would "offer evidence that pumping from [Phelan's] six wells located within the Groundwater Basin intercepts groundwater that would otherwise flow to the northwest and into a portion of the Adjudication Area where irrigation pumping by others is occurring. The evidence indicates, among other things, that the combination of [Phelan's] pumping and downgradient pumping by others has resulted in declining groundwater levels in the Southeast portion of the Adjudication Area, particularly over the past ten years. Groundwater level trends indicate that overdraft exists in the Southeast area of the Adjudication Area, or will exist in the near future, if groundwater pumping in this area continues at current rates or increases."

[27]Although Phelan did submit a case management statement seeking to clarify whether the issues to be decided in Phase 3 would necessitate testimony from their expert (Harder), none of the subjects on which Harder was proffered purported to address reasonable and beneficial uses of water by other AVAA users.

Phelan also appears to complain it was prejudiced because the Phase 4 trial order originally contemplated, but ultimately omitted, consideration of the "reasonable and beneficial use" question.[28] While Phelan correctly recites the evolution of the Phase 4 "trial issues" order, Phelan cites nothing to indicate it objected to this delimitation of the Phase 4 issues, even though it participated in the lengthy hearing at which the proposed modification was considered and ultimately approved. Accordingly, we must deem any claim of error to be waived. (*In re Kevin S.*, *supra*, 41 Cal.App.4th at pp. 885–886.)

Moreover, even assuming Phelan could assert it was error to exclude "reasonable and beneficial uses" from the Phase 4 trial, Phelan has not demonstrated such error would constitute reversible error. While the Phase 4 trial ultimately *was* limited to quantifying the amounts pumped during the relevant period by the numerous parties (other than the Small Pumper Class and Granite Construction) who claimed pumping rights in the AVAA aquifer, Phelan does not articulate on appeal how deferring the "reasonableness of use" question foreclosed Phelan from *subsequently* demonstrating the existence of waste (as alleged in its seventh cause of action) or the existence of a basin-wide surplus necessary to its second cause of action. Phelan does complain on appeal that its seventh cause of action for "waste, unreasonable use or an unreasonable method of diversion or use" was "never heard," but Phelan does not explain how the delineation of issues in Phases 3 or 4 precluded Phelan from litigating its seventh cause of action. To the

---

[28]The Phase 4 trial order originally described its scope to include determining the "reasonable and beneficial use of water for each parcel to be adjudicated." However, a subsequent proposal was submitted by counsel for the Wood class, and joined by other parties, to winnow the issues to be tried in Phase 4 and limit it to identifying the actual amounts extracted by each claimant (for the relevant years) along with the actual use to which the water was put, while excluding from Phase 4 any litigation over whether such actual use was reasonable as to either the type or manner of use. After extensive discussion among the parties, the Phase 4 order was amended to clarify that the trial would be limited to "the amount of water used by each party and the identification of the beneficial use to which that amount was applied, but will not include any determination as to the reasonableness of that type of use, of the manner in which the party applied water to that use, or any determination of a water right."

contrary, the record shows (after the Phase 3 and 4 proceedings had been concluded) the court held a lengthy hearing to determine which of Phelan's claims should next be scheduled for trial, and ultimately set the Stage One trial to encompass litigation of Phelan's claimed "right to pump water as an appropriator of right, Number one; and Number two, [to] brief and present evidence ... concerning [Phelan's] right ... as a public producer apart from whether there was a surplus." (Some capitalization omitted.) Phelan was provided adequate opportunity to litigate whether there was available surplus in the AVAA aquifer to support its claim as an appropriator, which could have included the subsidiary issue it now asserts it was foreclosed from litigating: whether elimination of unreasonable or nonbeneficial water uses would have produced a surplus (from the native safe yield) that Phelan could have claimed as an "appropriator." However, Phelan did not introduce any evidence the actual amounts pumped by other users exceeded the amounts reasonably appropriate for the beneficial purposes of those users, much less that such wasteful uses were (in the aggregate) so enormous that eliminating such waste would have reduced reasonable and beneficial uses to below the native safe yield and created a surplus available for appropriation by Phelan. We conclude Phelan was not deprived of the due process opportunity to show unreasonable or nonbeneficial uses.[29]

---

[29]It also appears Phelan could have resurrected and litigated its seventh cause of action on two other occasions. First, after the court ruled on Phelan's causes of action alleging it held water rights as an appropriator of a surplus or as a municipal-uses appropriator, the court held the August 2015 Stage 2 trial for Phelan to present evidence on its "remaining causes of action." Phelan's trial brief for that Stage 2 trial addressed only its third cause of action (for a physical solution), its claim it should have municipal appropriator status, and its eighth cause of action seeking declaratory relief as to the "Antelope Valley Groundwater Basin." Additionally, its evidentiary presentation at that hearing proffered no evidence of "waste." Phelan's trial brief for the August 2015 Stage 2 trial *did* "reserve[] the right to present evidence on its Seventh Cause of Action," which it suggested would be presented during the "prove up hearings" on the Physical Solution scheduled for later that year. While these "prove-up" hearings in Phase 6 provided yet another opportunity for Phelan to introduce evidence supporting its claim of unreasonable use of water, Phelan ultimately disclaimed any effort to present affirmative evidence at the final phase examining the proposed Physical Solution.

The final aspect of Phelan's claim it was denied due process appears to assert the court misallocated the burden of proof by placing the burden on Phelan to show a surplus existed in the AVAA basin. Phelan sub silencio argues that, under *Peabody*, *supra*, 2 Cal.2d 351, the burden should instead have been on all parties to show the amounts actually pumped by each of the competing priority pumpers was devoted *solely* to reasonable and beneficial uses, and that the absence of such evidence left the issue of surplus unresolved.[30] Cross-defendants contend the trial court correctly ruled that Phelan, as the party asserting there was a surplus available for appropriation (necessary to its second cause of action) or there was "waste" (as asserted in Phelan's seventh cause of action), had the burden to show the amounts actually pumped exceeded the amounts devoted to reasonable and beneficial uses by the paramount rights holders.

We conclude the trial court correctly held Phelan had the burden of proof to show surplus and, to the extent Phelan contended that eliminating wasteful uses would reveal a surplus existed that would be available for appropriative uses by Phelan, to show the fact and extent of such alleged unreasonable or nonbeneficial use. Several cases support

---

[30]Phelan also claims the statement of decision from the Stage One trial, which rejected Phelan's "surplus" claim, was "flawed" because it "does not explain" why (under *Peabody*) the burden of proof was not placed on all parties to first establish their actual water use was also "reasonable and beneficial." Phelan did assert the statement of decision required such explanation, but the court's final statement of decision from Stage One addressing Phelan's claim for surplus *did* explain why it concluded Phelan had the burden of proof as to surplus. Moreover, we reject Phelan's claim that the issue of "reasonable and beneficial use" was never resolved below. While the Stage One statement of decision stated the court had not yet made (but would ultimately make) a determination whether other paramount rights holders devoted the water to reasonable and beneficial uses, it ultimately did resolve that question. The trial on the proposed Physical Solution contemplated that it would encompass evidence that the actual uses by the various pumpers were reasonable and beneficial uses, and evidence on this issue *was* introduced by proponents of the Physical Solution. Finally, the issue was addressed and resolved in the final statement of decision following Phase 6, when the court stated that "[b]ased on their credible and undisputed expert witness testimony, and substantial evidence in the fourth and sixth phases of trial, the Court finds that each stipulating Landowner Party and each Public Overlier has reasonably and beneficially used amounts of water which collectively exceeded the total native safe yield."

placing the burden of proof on Phelan, as the party asserting an appropriative right, to prove a surplus existed upon which it could predicate its claimed appropriative right. (*Allen v. California Water & Tel. Co.*, *supra*, 29 Cal.2d at p. 481 ["It is true that the burden of proving the existence of a surplus is on" the party asserting the appropriative right against overlying owners]; cf. *City of Lodi v. East Bay Mun. Utility Dist.*, *supra*, 7 Cal.2d at p. 339 [in dispute between later appropriator against prior appropriator, burden on former to prove surplus]; *Monolith Portland Cement Co. v. Mojave Public Utilities Dist.* (1957) 154 Cal.App.2d 487, 494 [dicta].) This allocation of the burden of proof is consonant with the general rule that a plaintiff has the burden of production and persuasion to support the allegations of its claims for relief. (See generally *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 652.)

Phelan's reliance on *Peabody* does not alter our conclusion the trial court correctly assigned to Phelan the burden of showing surplus and, as a predicate to establishing such a surplus existed, that there was waste. In *Peabody*, the trial court had entered a judgment in favor of the riparian owners and against the later appropriator on the theory that riparian owners were entitled to "all of the waters of the stream as the same were wont to flow in the course of nature, including the flood and freshet flows thereof, regardless of any waste or surplus that might result from the exercise of such a right and regardless of any rule of reasonable use." (*Peabody*, *supra*, 2 Cal.2d at p. 363.) The trial court in *Peabody* had not considered the impact of the then-recent amendment of the California Constitution, which added section 3 to article XIV, declaring "[t]he right to water or to the use or flow of water in or from any natural stream or watercourse in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water." (*Peabody*, at p. 366.) The *Peabody* court reversed and remanded the judgment for reconsideration in light of those limitations, noting the issue is whether "after

excluding all of the reasonable beneficial uses present and prospective (considering in connection therewith reasonable methods of use and reasonable methods of diversion) to which the waters of the stream are put, either under the riparian right or by prior appropriation, is there then water wasted or unused or not put to any beneficial use? If so, the supply or product of the stream may be said to be ample for all, a surplus or excess exists, ... and the appropriator may take the surplus or excess without compensation." (*Id.* at pp. 368–369.) However, *Peabody* specifically considered whether the burden of proof should be on the riparian owner to show its riparian rights were injured by the appropriator's diversion, or should instead be on the appropriator to show "'that there is a surplus ... upon the ground that such [appropriated] waters were waste or lost waters'" as had been held in *Miller v. Bay Cities Water Co.* (1910) 157 Cal. 256, 272. (*Peabody, supra*, at p. 381.) *Peabody* concluded "[t]he general rule in this state as to the burden of proof is laid down in [former] section 1981 of the Code of Civil Procedure as follows: 'The party holding the affirmative of the issue must produce the evidence to prove it; therefore, the burden of proof lies on the party who would be defeated if no evidence was given on either side.' However, when one enters a field of water supply and seeks by appropriation to take water from such supply on the claim that there is more than sufficient for all reasonable beneficial uses by those who have the prior and preferential right, it would seem to comport with the principles of fairness and justice that the appropriator, in whatever way the issue may arise, should have the burden of proving that such excess exists. We therefore reaffirm the rule to that effect in the *Miller* case." (*Ibid.*)

Thus, while *Peabody* and its progeny make clear that determining surplus can include consideration of whether the actual amounts used by paramount water rights holders are being applied to reasonable and beneficial uses, *Peabody* also casts upon the person claiming appropriative rights the burden of showing there is available surplus after accounting for reasonably and beneficially applied water by paramount rights holders.

When a showing of available surplus necessarily encompasses showing actual uses by paramount rights holders are unreasonable (as to either the type or manner of use), as well as quantifying such unreasonable uses in an amount necessary to provide for the surplus claimed by the appropriator, we conclude the burden of proof is upon the appropriator under *Peabody*.

We conclude Phelan was provided adequate opportunity to proffer evidence in support of its claim to water rights in the AVAA basin, that the trial court correctly placed on Phelan the burden of proving its claims, and that the phased proceedings did not impair Phelan's opportunity to present its case. We therefore reject Phelan's claim it was denied due process.

IV. The Trial Court Correctly Concluded Phelan Had No Priority Claim to Return Flows from Native Safe Yield*

Phelan finally asserts that, to the extent native water was extracted from the AVAA basin by Well 14 and then used by Phelan's customers on land overlying the AVGB, Phelan was entitled to any return flows from such water, and therefore it was error to require Phelan to pay a replenishment assessment without accounting for such return flows. Phelan, relying on *Montana v. Wyoming* (2011) 563 U.S. 368 and various other foreign authorities discussing water law concepts of recapture of waste and seepage water, asserts the trial court erred in limiting claims for return flows to importers of nonnative waters. Cross-defendants argue the trial court below correctly held state law is dispositive and, under cases such as *City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d 199 (*San Fernando*), the interests recognized in return flows by California courts is limited to return flows from water *imported* by the claimant. Cross-defendants

*See footnote, *ante*, page 1.

argue that, because Well 14 only draws native water from the AVAA aquifer, the trial court correctly rejected Phelan's claim to return flows for water drawn from Well 14.[31]

California courts, when addressing the allocation of a limited supply of groundwater among competing claimants, have distinguished at least three sources of such water: (1) native groundwater (rainfall, infiltration from lakes and streams, and other natural inflows that percolate into the aquifer), (2) imported water and the return flows it generates (imported water that is used on the surface which then percolates into the aquifer), and (3) salvaged water (water that would have wasted to the sea during the rainy season but for the dams and reservoirs capturing and saving it from loss to the sea) and the return flows generated by its capture and use. (See generally *City of Santa Maria v. Adam*, *supra*, 211 Cal.App.4th at p. 280.) The courts have concluded that, when a party imports water into a basin that would otherwise not be available to that basin (i.e., not attributable to native sources of recharge), that party (after applying the water in the first instance) *also* has "the prior right to quantities of groundwater attributable to return flows of imported water." (*Id.* at p. 301.) This is a rule of priorities and "means that one who brings water into a watershed may retain a prior right to it even after it is used. [Citation.] The practical reason for the rule is that the importer should be credited with

---

[31]Although we will conclude the trial court correctly rejected Phelan's claims to return flows from *native* water, nothing in this opinion should be construed to foreclose Phelan from seeking relief under the terms of the judgment to the extent Phelan has become a de facto *importer* of water. Under paragraph 6.4.1.2 of the Physical Solution, Phelan must pay a "Replacement Water Assessment pursuant to Paragraph 9.2" for water it pumps from Well 14. This Replacement Water Assessment is apparently designed to cover the watermaster's costs for "replacement waters" and specifies it "shall be used [by the watermaster] to *acquire Imported Water*." (Physical Solution, ¶ 9.2, italics added.) Phelan was not party to the provisions of the Physical Solution (which delimited which persons or entities would be entitled to claim the benefits of "return flows") nor was it party to any other agreement which might exclude water purchased by the watermaster with replacement assessments from qualifying as "imported water." We express no views on whether Phelan has become, albeit involuntarily, a participant in a consortium of parties paying the watermaster to import water into the AVAA or whether such status entitles Phelan to claim return flow interests under the rationale of *San Fernando*.

the 'fruits ... of his endeavors in bringing into the basin water that would not otherwise be there.'" (*Ibid.*)

This "fruits-of-his-endeavors" rationale has an important corollary: priority is *not* given to return flows from *native* waters. In *San Fernando*, our Supreme Court rejected such a claim, explaining:

> "Defendants contend that if any party is given rights to a return flow derived from delivered *imported* water, it is 'obvious' and 'axiomatic' that the same rights should be given to the return flow from delivered water derived from all other sources, including native water extracted from local wells. This argument misconceives the reason for the prior right to return flow from imports. *Even though all deliveries produce a return flow, only deliveries derived from imported water add to the ground supply.* The purpose of giving the right to recapture returns from delivered imported water priority over overlying rights and rights based on appropriations of the native ground supply is to credit the importer with the fruits of his expenditures and endeavors in bringing into the basin water that would not otherwise be there. *Returns from deliveries of extracted native water do not add to the ground supply but only lessen the diminution occasioned by the extractions.*" (*San Fernando, supra*, 14 Cal.3d at p. 261, 2d & 3d italics added.)

We agree with cross-defendants the trial court correctly ruled California does not grant an appropriator of native water any priority interest in return flows. In addition, the authorities relied on by Phelan do not convince us that *San Fernando* has been overruled sub silencio. For example, in *Montana v. Wyoming*, *supra*, 563 U.S. 368, the United States Supreme Court examined a narrow question: whether an interstate compact barred an upstream appropriator of native water supplies from using more efficient irrigation techniques because such efficiencies reduced the amounts returning to the watercourse for use by downstream appropriators. The *Montana* court merely concluded the interstate compact incorporated (and was not intended to alter) background appropriative water rights concepts, including the right of an appropriator to recapture and reuse his own waste and seepage before it escapes his possession and control, and that improving irrigation efficiencies was merely a form of recapture permitted under existing water law.

(*Id.* at pp. 378–388.) The *Montana* court did not purport to examine whether an appropriator is entitled to priority over return flows from native waters that have returned to the aquifer and is therefore inapposite.[32]

The California statutes cited by Phelan do not alter our conclusion. For example, while Water Code section 71610 does permit a water district to "recycle, recapture, and salvage any water ... for the beneficial use or uses of the district" (*id.* at subd. (a)), that section only describes powers of a water district and has never been applied to expand rights held by a water district. Indeed, because that statute was in effect at the time the court issued its decision in *San Fernando* (see Stats. 1963, ch. 156, § 1, p. 823), but the court nevertheless held extractions of native waters are not accompanied by return flow rights in such water, we decline to apply that section to undermine the *San Fernando* holding.

CONCLUSION

We conclude substantial evidence supports the judgment as to Phelan and Phelan was not deprived of its due process rights to present its claims. We also conclude the court correctly rejected Phelan's claim its status as a municipal purposes appropriator

---

[32]The other cases cited by Phelan are equally unpersuasive. For example, in *Department of Ecology v. United States Bureau of Reclamation* (1992) 118 Wash.2d 761, the issue resolved by the court was a narrow question: whether a state agency could grant a permit to a landowner to appropriate water from a stream where such water was still subject to the appropriative rights held by the federal government. The stream water in dispute was generated because a federal reclamation project drew water from the Columbia River and distributed that water to users within the project boundaries for irrigation and other purposes, but some portion of the water (after its initial use) then fed a stream that was still within the boundaries of that project. (*Id.* at pp. 763–765.) The *Department of Ecology* court merely concluded the water in the stream was still subject to the federal government's appropriation rights (which specifically reserved the right to recapture and reuse waste and seepage waters generated by the reclamation project), and because it remained appropriated water owned by the federal appropriator within the project boundaries, it was not public water and could not be reappropriated by the landowner. (*Id.* at pp. 767–769.) It appears that the water considered by the *Department of Ecology* court was more analogous to water "imported" into the reclamation project's boundaries by the reclamation project, and thus according superior rights to the federal importer is consonant with the rights accorded to importers of water under California law.

created an appropriative water right that was improperly constrained by the judgment, and did not err in rejecting Phelan's claim to return flows from native water pumped by Phelan from the AVAA basin. Accordingly, we affirm the judgment as to Phelan. Each party is responsible for its costs on appeal.

PEÑA, Acting P.J.

WE CONCUR:

SMITH, J.

SNAUFFER, J.

Exhibit 2

[Exempt From Filing Fee Government Code § 6103]

ALESHIRE & WYNDER, LLP
JUNE S. AILIN, State Bar No. 109498
jailin@awattorneys.com
NICOLAS D. PAPAJOHN, State Bar No. 305364
npapajohn@awattorneys.com
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Telephone: (949) 223.1170
Facsimile: (949) 223.1180

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

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

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

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

AND RELATED CROSS-ACTIONS

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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

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

DATED: May 25, 2018

Respectfully submitted,

ALESHIRE & WYNDER, LLP
JUNE S. AILIN

By: _____
JUNE S. AILIN
Attorneys for Defendant and Cross-Complainant
Phelan Piñon Hills Community Services District

Issued April 27, 2018
Envelope: 1460121

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

Included Consolidated Actions:

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

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

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

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

Judicial Council Coordination Proceeding No. 4408

Lead Case No. BC 325 201

ORDER AFTER HEARINGS ON APRIL 18, 2018

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.

Judge: Honorable Jack Komar, Ret.

The above-entitled matters came on regularly for hearing on April 18, 2018 at 9:00 a.m. in the Superior Court of California, County of Los Angeles, Room 222, the Honorable Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read and considered the supporting and opposing papers, and having heard and considered the arguments of counsel, and good cause appearing therefore, makes the following order:

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

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

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

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

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

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

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

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

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

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

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

Parties with a prescriptive or other appropriative or "legacy" right[1] to produce water from the native yield are described in Paragraph 5.1 et sq., and includes the small pumper class, overlying producers, non-overlying producers (public water suppliers with prescriptive rights) as well as the federal and state government entities. While Paragraph 3.5.30 defines a producer as a party who produces groundwater, "produce" is defined as pumping that is for reasonable and beneficial uses. Paragraph 3.5.29.

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

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

[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.

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

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

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

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

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

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

The parties seeking approval of the proposed physical solution and judgment offered evidence to justify and support the proposal. The physical solution was dependent on that evidence . The rights granted to Phelan were only to be a purchaser of water so that its use could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as either a plus or a minus- it was intended to have no net impact. If, as it requests, it is not required to pay for water pumped during 2016 and 1017, its pumping would contribute to the overdraft by pumping water to which it has no right.

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

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

CONCLUSION

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

SO ORDERED.

Dated: April 26, 2018

Hon. Jack Komar (Ret.)
Judge of the Superior Court

Judicial Council Coordination Proceeding No. 4408

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Judy C. Carter,

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

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

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

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

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

Attorney for Watermaster Board for the Antelope Valley Groundwater Adjudication

VIA OVERNIGHT MAIL

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

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

Judy C. Carter

ALESHIRE & WYNDER LLP

Exhibit 3

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

Included Consolidated Actions:

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

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

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

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

Judicial Council Coordination Proceeding No. 4408

Lead Case No. BC 325 201

ORDER AFTER HEARING ON NOVEMBER 14, 2019

Motion by Phelan Pinon Hills Community Services District for Declaratory Relief re Watermaster Resolution No. R-19-27 and Notice of Assessment of Replacement Water Assessments for 2016, 2017 and 2018

Judge: Honorable Jack Komar, Ret.

This Document Pertains to Add-On Case:

Little Rock Sand and Gravel, Inc., a California corporation v. Granite Construction Company
Superior Court of California
County of Los Angeles, Case No. MC026932

The above-entitled matter came on regularly for hearing on November 14, 2019 at 9:00 a.m., telephonically via CourtCall, the Honorable Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read and considered the supporting and opposing papers, and having heard and considered the arguments of counsel, and good cause appearing therefore, makes the following order:

Phelan Piñon Hills Community Services District (Phelan) has filed this motion for declaratory relief requesting that Phelan receive the benefit of the right to a stay of payment on invoices from the Watermaster without posting a bond and seeking a determination that the Watermaster's (WM) assessment of replacement water (RWA) costs is excessive and improper on the following grounds:

1. The determination of the proper replacement water assessment (RWA) is excessive and not supported by the evidence.
2. That imposition of RWA assessments is improper because the WM failed to abide by the judgment to establish rules, regulations, procedures and schedules;
3. The established rates are not related to the WM's actual costs of replacement water.
4. The amount of any assessment cannot be subject to penalties (interest) prior to August 14, 2019 since that date on the invoice is prior to the adoption by the WM by Resolution.

Phelan also seeks a declaration that the assessment for RWA for the years 2016, 2017, and 2018 should be stayed because requiring payment of those assessments is tantamount to requiring Phelan (a governmental agency) to post an appeal bond.

HISTORY

Phelan is an objecting, non-stipulating and non-supporting party to the Antelope Valley Coordinated Cases Adjudication (JCCP 4408) but is presently bound by the judgment which was entered therein on December 28, 2015.

This motion was heard telephonically on November 14, 2019 at 9:00 a.m. All appearances are noted in the minutes of the court.

The original judgment which was entered in this matter on December 28, 2015, adjudicated and determined the various water rights of the parties in this comprehensive groundwater adjudication. The judgment provided that Phelan (who had not pumped material amounts of water prior to the initiation of this adjudication) had neither vested legacy rights nor appropriative or other prescriptive rights to ground water in the Antelope Valley adjudication area[1]. Phelan's appeal from that judgment is still pending.

As a governmental agency, Phelan provides water to consumers in an area outside the Antelope Valley and outside the adjudication area from its one well in the adjudication area and other wells it owns in its service area outside the adjudication area. In view of those circumstances, in the best interests of the people of this state, the stipulating parties in this matter (the vast majority of water producers and overlying land owners who pump), Phelan was granted a right to produce up to 1200 acre feet a year for the use of its customers in its service area, subject to certain express conditions which included the duty to pay a RWA for all water it pumped.

On April 26, 2019, this court denied Phelan's motion which had requested an interpretation of the judgment that would relieve it of any RWAs for the years 2016 and 2017. Phelan has also appealed that order in a separate appeal that is pending.

[1] Phelan had not pumped from its well in the adjudication area prior to the initiation of this adjudication and there was no surplus of water for an appropriator in the aquifer at any such time or thereafter, it being in a condition of severe overdraft. Thus all water it pumped was not available for prescriptive right, all of which was used outside the adjudication area.

CONCLUSIONS

A. THE INVOICES FOR 2016, 2017, AND 2018

Phelan contends that the payment on the invoices from the WM for the years 2016, 2017, and 2018 should be stayed because the matter is on appeal both from the original judgment as well as the denial of the later motion for declaratory relief decided in April 2018.

Phelan argues that pursuant to the Code of Civil Procedure Section 995.220, governmental agencies are entitled to an automatic stay of money judgments without the necessity of posting an appeal bond. While Phelan recognizes the court's order denying relief on April 26, 2019 is not a money judgment, it is its contention that the order which interpreted the language in the judgment authorized the demand for payment for the 2016 and 2017 assessments for replacement water and is tantamount to a money judgment, and as such its appeal should be automatically stay payment to prevent depletion of public funds.[2]

Neither the court's original judgment nor the court's order made any determination of money owing; it merely adjudged that Phelan could not pump water for use outside the adjudication (aquifer) area and then at Phelan's request issued a declaration that Phelan was not entitled to the specific provisions of the judgment which exempted parties with pumping rights from replacement water assessments during the first two years of a rampdown process. Phelan has no right whatsoever to pump water for use outside the aquifer and the adjudication area unless it pays to replace the water. Payment is an express condition to the right to pump water for use outside the basin.

The judgment generally, with very few exceptions, prohibits and enjoins most parties from exporting water from the adjudication area for uses outside the basin. Phelan is not authorized to pump for export without payment. In its simplest terms the effect is the same as a prohibitory injunction; not mandatory, although except for the language in the judgment itself, the court has made no specific orders concerning Phelan's conduct.

[2] Here there are no additional costs other than the cost of replacement water.

Phelan can choose to refrain from pumping until the appeal has been decided. Permitting it to pump without payment for replacement water would materially inhibit the process of restoring this significantly over drafted basin and cause continuing detriment to the aquifer.

B) REPLACEMENT WATER RATES

The judgment provides that all replacement water rate assessments must be at the rate paid by the Watermaster for such water plus certain additional costs. All water acquired by the Watermaster in this and other areas principally is California Water Project water which is acquired from the California Water Project and sold to public and other entities by State Water Contractors.

On January 24, 2018, the WM adopted Resolution R-18-04. Thereafter it approved the rate for the parties in the AVEK service area reserving decision on the rate issue for those parties outside the AVEK area.

The Antelope Valley State Water Contractors Association (AVSWCA) is the association of all entities that contract to provide state water project water to all who contract with it for that purpose. The AVSWCA is not a party to this adjudication. The Antelope Valley Water Master does contract with its members to provide replacement water and must pay its rates.

On March 14, 2019, the AVSWCA adopted an economic study (Raftelis) that recommended certain costs for water in the various areas in which it provided state water project water essentially following the recommendations in the economic report.

On April 24, 2019, the WM Board by resolution approved and adopted the rate structure, attached and incorporated the economic study and its conclusions, and established that rate structure for all parties outside the AVEC jurisdictional area.

Phelan contends that the dates on the invoices prove the invoices were prepared before the rates were established. The evidence establishes that In July 2019, WM Staff began preparing invoices for those who would be assessed for RWA in order to be prepared when the Board approved the rate structure. The template invoices carried a July date but no actual invoices were prepared pending the board decision. After the board decision was made and Resolution R-19-27

was adopted, the rates were then computed (not without some errors) and placed in the invoice template for delivery to those parties who would be responsible for payment- including Phelan. The dates on the invoices reflected the July date which was the template preparation date but not the date the individual invoices were prepared.

On August 28, 2019, he WM Board adopted R-19-27 which set rates for those within the AVSWCA area and those outside of it. In this motion, Phelan disputes the rates set by AVSWCA's resolution asserting that it includes costs of depreciation dating back to the original creation of the California Water Project. Whether the RWA's imposed by the AVSWCA were fairly computed or not, that is the only source of replacement water for the Watermaster, and it passes on actual costs to the purchasers.

Phelan contends that the judgment requires that the WM adopt rules, regulations, procedures and the like before it may impose RWA's. While with regard to many other issues of WM operations, that may be correct. But as to water it provides to parties who must pay for it, there must be internal accounting and records and internal procedures. That requirement is satisfied herein.

CONCLUSION AND ORDER

1. There is no automatic stay to which Phelan is entitled regarding the WM invoices for the years 2016- through 2018, or otherwise.
2. The WM Invoices are only for the cost of water it must pay to replace the ground water that Phelan exports.
3. The evidence is sufficient to support the conclusion that the Watermaster RWA rates for Phelan water to be exported are reasonable. No contrary evidence has been submitted.
4. Phelan may consider whether it wishes to present further evidence challenging the reasonableness of the WM rates in which case the court may continue decision on that issue to a hearing date to be determined. All other issues decided herein will remain as concluded.

5. A further conference call hearing is set for November 22, 2019 at 9:00 a.m.

SO ORDERED.

Dated: November 14, 2019

Hon. Jack Komar (Ret.)
Judge of the Superior Court

Exhibit 4

IN THE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE

FIFTH APPELLATE DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES. [Five coordinated cases*]	F075451 (JCCP No. 4408) **ORDER**

BY THE COURT:†

The "Petition for Writ of Supersedeas or Other Stay Order," filed by appellant Phelan Piñon Hills Community Services District on January 21, 2020, is denied.

Poochigian, A.P.J.

---

* The five coordinated cases are: *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Los Angeles County, No. BC325201); *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.* (Super. Ct. Kern County, No. S-1500-CV-254-348); *Wm. Bolthouse Farms, Inc. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC353840); *Diamond Farming Co. v. City of Lancaster* (Super. Ct. Riverside County, No. RIC344436); *Diamond Farming Co. v. Palmdale Water Dist.* (Super. Ct. Riverside County, No. RIC344668).

† Before Poochigian, A.P.J., Peña, J. and Snauffer, J.

Exhibit 5

FEES

Status	Date	Time keeper	Matter	Hours	Rate	Amount	Bill	Billed Amount	Narrative
Paid	03/16/2018	CAP	00001	1.4	395	$ 553.00	149212	$ 553.00	Review correspondence regarding rampdown and review judgment and review and discuss with counsel for public water suppliers issues relating to rampdown starting numbers; review PPHCSD demand to re-evaluate prior legal opinion regarding their position on replacement water.
Paid	03/30/2018	CAP	00001	3.5	395	$ 1,382.50	149212	$ 1,382.50	Review motion of PPHCSD to rescind Board resolution and draft, edit and amend opposition to PPHCSD's motion to rescind Board resolution and review in light of Court order and Judgment.
Paid	04/11/2018	CAP	00001	1.7	395	$ 671.50	150130	$ 671.50	Review reply to opposition filed by PPHCSD and prepare for hearing.
Paid	04/17/2018	CAP	00001	4.8	395	$ 1,896.00	150130	$ 1,896.00	Prepare for court hearing on PPHCSD's motion and review all filings regarding the same; to Los Angeles for overnight before hearing; call with Engineer on rampdown memorandum and issues.
Paid	04/18/2018	CAP	00001	4.9	395	$ 1,935.50	150130	$ 1,935.50	Respond to correspondence regarding Phelan hearing; prepare for hearing; attend hearing in Los Angeles; summary of hearing to file; return to Santa Barbara.
Paid	04/30/2018	TEM	00001	2.7	395	$ 1,066.50	150130	$ 1,066.50	Confer with Mr. Parton regarding judgment; legal research regarding pre-judgment interest, post-judgment interest, appealability of order against Phelan, and stay issues.
Paid	11/02/2018	TEM	00001	0.4	395	$ 158.00	157777	$ 158.00	Investigation regarding status of Phelan appeal.
Paid	11/21/2018	TEM	00001	0.2	395	$ 79.00	157777	$ 79.00	Investigation regarding status of Phelan appeal.
Paid	01/15/2019	TEM	00001	1.1	395	$ 434.50	159413	$ 434.50	Confer with court clerk regarding Phelan appeal; review order from court segregating and consolidating appeals; prepare memorandum regarding status of appeals.
Paid	01/18/2019	TEM	00001	0.4	395	$ 158.00	159413	$ 158.00	Review correspondence from Phelan to the court of appeal; review docket regarding same.
Paid	02/08/2019	TEM	00001	0.9	395	$ 355.50	160256	$ 355.50	Confer with court clerk regarding record for Phelan appeal; legal research regarding same.
Paid	02/27/2019	TEM	00001	3.5	395	$ 1,382.50	160256	$ 1,382.50	Review order from appellate court regarding Phelan appeal; review pleadings and documents filed by Phelan for appeal.
Paid	03/05/2019	TEM	00001	0.9	395	$ 355.50	161077	$ 355.50	Review new appendix filed by Phelan for its appeal.
Paid	03/19/2019	TEM	00001	0.8	395	$ 316.00	161077	$ 316.00	Review docket regarding status of Phelan appeal; review second set of appendices filed by Phelan.
Paid	03/27/2019	TEM	00001	1	395	$ 395.00	161077	$ 395.00	Investigation regarding status of Phelan appeal; prepare memorandum regarding same.
Paid	03/28/2019	TEM	00001	0.9	395	$ 355.50	161077	$ 355.50	Conferences with court clerk regarding Phelan appeal; review orders and pleadings regarding same; prepare memorandum regarding same.
Paid	04/26/2019	TEM	00001	1.2	395	$ 474.00	162584	$ 474.00	Prepare letter to Court of Appeal requesting an order compelling Phelan to file its appellant's opening brief; conferences with court clerks regarding same.
Paid	05/08/2019	TEM	00001	3.7	395	$ 1,461.50	163477	$ 1,066.50	Review judgment regarding nonpayment of assessments; research regarding legal remedies for collecting assessments and creating liens; prepare letter to court of appeal regarding status of Phelan's 2018 appeal.
Paid	05/13/2019	TEM	00001	2	395	$ 790.00	163477	$ 790.00	Review letter from Phelan to appellate court; review docket and confer with court clerk regarding same; memorandum regarding same; research regarding enforcement of delinquent liens.
Paid	05/14/2019	TEM	00001	0.2	395	$ 79.00	163477	$ 79.00	Review appellate court's response to Phelan letter.
Paid	09/04/2019	TEM	00001	1.7	395	$ 671.50	166463	$ 671.50	Conference regarding bill for RWA; legal research regarding scope of stay due to Phelan's appeal.
Paid	09/17/2019	CAP	00001	0.4	395	$ 158.00	166463	$ 158.00	Review Phelan correspondence regarding RWA for 2018 and request to modify RWA for that year.
Paid	09/30/2019	TEM	00001	1.5	395	$ 592.50	166463	$ 592.50	Review motion for declaratory relief filed by Phelan Hills; legal research regarding same.
Paid	10/01/2019	CAP	00002	1.3	495	$ 643.50	168233	$ 513.50	Edit and amend letter to Phelan counsel regarding motion for declaratory relief.
Paid	10/02/2019	CAP	00002	2.4	495	$ 1,188.00	168233	$ 474.00	Review Phelan motion regarding RWAs for 2016-2018 and finalize letter to Phelan's counsel regarding the same; correspondence with counsel for pumpers pumping outside Judgment.
Paid	10/07/2019	CG	00002	0.3	315	$ 94.50	168233	$ 81.00	Review correspondence from PPHCSD regarding motion for declaratory relief.
Paid	10/08/2019	TEM	00002	1.2	495	$ 594.00	168233	$ 474.00	Conferences regarding RWA calculations; legal research regarding same; review Phelan's motion for declaratory relief.
Paid	10/08/2019	CG	00002	0.7	315	$ 220.50	168233	$ 189.00	Review PPHCSD motion for declaratory relief; email correspondence with Watermaster staff and regarding same.
Paid	10/17/2019	CG	00002	2.4	315	$ 756.00	168233	$ 648.00	Draft opposition to PPHCSD motion for declaratory relief; legal research regarding same.
Paid	10/18/2019	CAP	00002	1.2	495	$ 594.00	168233	$ 474.00	Work on Phelan opposition and edit agenda for attorneys report.
Paid	10/18/2019	CG	00002	7.2	315	$ 2,268.00	168233	$ 1,944.00	Draft opposition to PPHCSD motion; legal research regarding same; email correspondence with Watermaster staff regarding same.
Paid	10/21/2019	CG	00002	4.6	315	$ 1,449.00	168233	$ 1,242.00	Draft opposition to PPHCSD motion for declaratory relief; legal research regarding same; email correspondence with Watermaster staff regarding same.
Paid	10/22/2019	CG	00002	1.2	315	$ 378.00	168233	$ 324.00	Email correspondence with Raftelis regarding CPI inflation factor; updated opposition to PPHCSD motion; email correspondence with clients regarding same.
Paid	10/24/2019	CG	00002	1.3	315	$ 409.50	168233	$ 351.00	Review/update opposition to PPHCSD motion; email correspondence with Mr. Knudson regarding same; telephone call with Stan Powell regarding same; telephone call with Robert Kuhs regarding same.

Status	Date	Time keeper	Matter	Hours	Rate	Amount	Bill	Billed Amount	Narrative
Paid	10/28/2019	CAP	00002	0.4	495	$ 198.00	168233	$ 158.00	Review court order regarding timing of Phelan motion hearing and contact court regarding the same.
Paid	11/12/2019	CAP	00002	3.3	395	$ 1,303.50	168273	$ 1,303.50	Review all filings by Phelan in preparation for oral argument before court.
Paid	11/13/2019	CG	00002	3.1	270	$ 837.00	168273	$ 837.00	Email correspondence and legal research regarding hearing on Phelan motion for declaratory relief; legal research regarding potential Brown Act issues; telephone call to Raftelis regarding same.
Paid	11/18/2019	CAP	00002	1.4	395	$ 553.00	168273	$ 553.00	Work on schedule for discovery in anticipation of Phelan retaining an expert to challenge RWA calculations; review notice of ruling in motion.
Paid	11/20/2019	CAP	00002	0.8	395	$ 316.00	168273	$ 316.00	Prepare for hearing on Phelan motion to determine if Phelan is going to challenge the Raftelis report with their own expert; develop discovery schedule should Phelan designate an expert.
Paid	11/22/2019	CAP	00002	2.4	395	$ 948.00	168273	$ 948.00	Prepare for and participate in motion of Phelan regarding RWA's and review court order and strategize regarding enforcement options with Phelan.
Paid	11/22/2019	TEM	00002	1.5	395	$ 592.50	168273	$ 592.50	Review order denying motion for stay; conferences regarding same and enforcement of invoices; legal research regarding same.
Paid	11/25/2019	TEM	00002	0.5	395	$ 197.50	168273	$ 197.50	Prepare notice of entry of judgment; conference regarding appeal issues.
Paid	12/06/2019	TEM	00002	1.2	395	$ 474.00	169947	$ 474.00	Conference regarding collection of amounts owed by Phelan for RWA and appeal of Judge Komar's order; legal research regarding same.
Paid	12/23/2019	TEM	00002	0.4	395	$ 158.00	169947	$ 158.00	Conference regarding collection issues; confer with appellate court clerk regarding appeal.
Paid	01/06/2020	TEM	00002	0.3	395	$ 118.50	169989	$ 118.50	Review correspondence with Phelan regarding RWAs.
Paid	01/07/2020	TEM	00002	0.9	395	$ 355.50	169989	$ 355.50	Research regarding RWA collection issues.
Paid	01/13/2020	CAP	00002	0.6	395	$ 237.00	169989	$ 237.00	Review correspondence from Phelan's counsel regarding payment of RWA; review Judgment accordingly and respond.
Paid	01/15/2020	CG	00002	0.5	270	$ 135.00	169989	$ 135.00	Legal research regarding alternative options for Replacement Water Obligations.
Paid	01/17/2020	TEM	00002	0.2	395	$ 79.00	169989	$ 79.00	Confer with court clerk regarding status of appeals.
Paid	01/22/2020	TEM	00002	1.7	395	$ 671.50	169989	$ 671.50	Legal research regarding petition for writ for supersedeas; correspondence regarding same; confer with appellate court clerk regarding opposition to writ petition.
Paid	01/23/2020	TEM	00002	0.9	395	$ 355.50	169989	$ 355.50	Review writ petition.
Paid	01/24/2020	TEM	00002	2.9	395	$ 1,145.50	169989	$ 1,145.50	Prepare opposition to writ petition.
Paid	01/27/2020	TEM	00002	4.5	395	$ 1,777.50	169989	$ 1,777.50	Prepare opposition to Phelan's writ petition
Paid	01/28/2020	TEM	00002	2.9	395	$ 1,145.50	169989	$ 1,145.50	Prepare opposition to Phelan's writ petition
Paid	01/29/2020	CG	00002	2.5	270	$ 675.00	169989	$ 675.00	Draft opposition to the supersedeas petition; legal research regarding same.
Paid	01/29/2020	TEM	00002	3.1	395	$ 1,224.50	169989	$ 1,224.50	Prepare opposition to writ petition.
Paid	01/30/2020	TEM	00002	2.1	395	$ 829.50	169989	$ 829.50	Prepare opposition to writ petition; legal research regarding same.
Paid	01/30/2020	CG	00002	4.6	270	$ 1,242.00	169989	$ 1,242.00	Draft opposition to Phelan writ petition; legal research regarding same.
Paid	01/31/2020	TEM	00002	3.2	395	$ 1,264.00	169989	$ 1,264.00	Prepare opposition to writ petition.
Paid	02/03/2020	TEM	00002	5.9	395	$ 2,330.50	170849	$ 2,330.50	Prepare opposition to writ petition.
Paid	02/04/2020	CAP	00002	3.3	395	$ 1,303.50	170849	$ 1,303.50	Review and edit opposition to writ and forward to Watermaster staff for comment.
Paid	02/04/2020	TEM	00002	3.3	395	$ 1,303.50	170849	$ 1,303.50	Prepare writ opposition; conferences regarding same.
Paid	02/05/2020	CAP	00002	2.5	395	$ 987.50	170849	$ 987.50	Final edits to opposition to writ and review Judgment provisions regarding Phelan.
Paid	02/05/2020	TEM	00002	3.9	395	$ 1,540.50	170849	$ 1,540.50	Complete opposition to writ petition and file same with appellate court; correspondence regarding same.
Paid	02/10/2020	TEM	00002	0.3	395	$ 118.50	170849	$ 118.50	Confer with appellate court clerk regarding reply brief and decision by court of appeal.
Paid	02/24/2020	TEM	00002	1.9	395	$ 750.50	170849	$ 750.50	Review docket regarding status of appeal; legal research regarding ruling on supersedeas writ; confer with Mr. Parton regarding enforcement of post-judgment order; legal research regarding same.
Paid	02/25/2020	TEM	00002	1.6	395	$ 632.00	170849	$ 632.00	Review docket regarding status of appeals and writ petition; conferences regarding future handling; legal research regarding OSC regarding contempt if Phelan continues to pump water without paying replacement water fees.
Paid	03/04/2020	TEM	00002	0.2	395	$ 79.00	172135	$ 79.00	Status review regarding petition for writ of supersedeas.
Paid	03/11/2020	TEM	00002	0.8	395	$ 316.00	172135	$ 316.00	Review Phelan's reply brief; conference regarding same.
Paid	03/19/2020	TEM	00002	1.3	395	$ 513.50	172135	$ 513.50	Review order denying Petition for Writ of Supersedeas; legal research regarding review by California Supreme Court; prepare demand letter to Phelan.
Paid	03/23/2020	CG	00002	0.3	270	$ 81.00	172135	$ 81.00	Legal research regarding Phelan's proposal to lease water.
Paid	03/24/2020	TEM	00002	0.2	395	$ 79.00	172135	$ 79.00	Conference regarding demand for RWA payment from Phelan.
Paid	04/03/2020	CG	00002	1.6	270	$ 432.00	172954	$ 432.00	Draft memorandum to Watermaster Board regarding Phelan request for Transfer.
Paid	04/07/2020	CAP	00002	0.7	395	$ 276.50	172954	$ 276.50	Review memorandum to Board regarding Phelan using transfer water to meet RWA.
Paid	04/07/2020	TEM	00002	2.3	395	$ 908.50	172954	$ 908.50	Prepare memorandum regarding status of Phelan appeal; legal research regarding recovery of post-judgment attorneys' fees from Phelan.
Paid	04/09/2020	CAP	00002	0.4	395	$ 158.00	172954	$ 158.00	Review objections of County to PPHCSD getting transfer water to meet RWA obligations.
Paid	04/09/2020	TEM	00002	1.5	395	$ 592.50	172954	$ 592.50	Correspondence with Robert Kuhs regarding representations made in court by Phelan relating to payment of RWAs; conference regarding same; prepare demand letter to Phelan regarding attorneys' fees and interest on unpaid and delinquent RWAs.

Status	Date	Time keeper	Matter	Hours	Rate	Amount	Bill	Billed Amount	Narrative
Paid	04/10/2020	CG	00002	0.3	270	$ 81.00	172954	$ 81.00	Review correspondence from Warren Wellen and Jim Markman regarding Phelan proposal to lease water to meet Replacement Obligation.
Paid	04/10/2020	TEM	00002	1.7	395	$ 671.50	172954	$ 276.50	Continue preparation of demand to Phelan for payment of interest, costs and attorneys' fees; conferences regarding same; investigation regarding accumulated interest on delinquent RWAs
Paid	04/13/2020	CG	00002	1.3	270	$ 351.00	172954	$ 351.00	Update memorandum to Board regarding Phelan water transfer request.
Paid	04/24/2020	TEM	00002	1	395	$ 395.00	172954	$ 395.00	Review court order regarding appeal; legal research regarding same; conference with court clerk regarding same.
Paid	04/29/2020	CG	00002	0.2	270	$ 54.00	172954	$ 54.00	Review Phelan request for transfer in lieu of payment of RWAs.
Paid	05/06/2020	TEM	00002	0.3	395	$ 118.50	173779	$ 118.50	Conference regarding strategy for collection of RWAs from Phelan.
Paid	05/18/2020	CG	00002	0.3	270	$ 81.00	173779	$ 81.00	Phelan request for Transfer in lieu of payment of RWAs; review correspondence from Phelan and Watermaster Engineer regarding same.
Paid	05/26/2020	TEM	00002	0.4	395	$ 158.00	173779	$ 158.00	Review court orders regarding appeal scheduling; review docket regarding same; conference regarding same.
Paid	06/05/2020	CG	00002	0.8	270	$ 216.00	174648	$ 216.00	Draft memorandum to Board regarding Phelan request for transfer to meet Replacement Obligation; legal research regarding same.
Paid	06/08/2020	CG	00002	2	270	$ 540.00	174648	$ 540.00	Draft memorandum to Board regarding Phelan transfer request, analysis of options for approval or denial.
Paid	06/08/2020	CAP	00002	0.7	395	$ 276.50	174648	$ 276.50	Review and revise memorandum regarding Phelan and transfer water.
Paid	06/09/2020	CG	00001	2.1	270	$ 567.00	174247	$ 567.00	Review Phelan transfer request, Calandri/V Lions transfer request, pre-existing storage agreements in draft Rules and Regulations; revise memorandum to Board regarding Phelan transfer; conference call with Watermaster Engineer and Staff regarding same.
Paid	06/11/2020	CG	00002	0.7	270	$ 189.00	174648	$ 189.00	Revise memorandum to Board regarding Counsel/Engineer recommendation on Phelan's request for transfer.
Paid	06/15/2020	CG	00002	0.6	270	$ 162.00	174648	$ 162.00	Research regarding Phelan transfer request; conference call with Watermaster Engineer regarding same.
Paid	06/17/2020	TEM	00002	0.2	395	$ 79.00	174648	$ 79.00	Correspondence with appeal clerk regarding briefing orders.
Paid	06/19/2020	CG	00002	0.7	270	$ 189.00	174648	$ 189.00	Conference call with Keith Lemeiux, Laura Jacobson and Warren Wellen regarding Phelan transfer request.
Paid	06/26/2020	TEM	00002	0.2	395	$ 79.00	174648	$ 79.00	Correspondence regarding briefing schedule for appeals.
Paid	07/02/2020	TEM	00002	0.1	395	$ 39.50	175140	$ 39.50	Review court orders regarding briefing.
Paid	07/06/2020	TEM	00002	0.2	395	$ 79.00	175140	$ 79.00	Report regarding status of appeal.
Paid	07/14/2020	TEM	00002	0.2	395	$ 79.00	175140	$ 79.00	Review appellate court orders regarding briefing.
Paid	09/01/2020	TEM	00002	0.3	395	$ 118.50	177303	$ 118.50	Conference regarding Phelan proposal; review status of appeals.
Paid	09/18/2020	CG	00001	0.2	270	$ 54.00	176897	$ 54.00	Draft memorandum to Board regarding closed session consideration of anticipated litigation with Phelan.
Paid	09/21/2020	TEM	00002	0.6	395	$ 237.00	177303	$ 237.00	Conference regarding Phelan's proposed provision of replacement water; review and revise memorandum regarding same.
Paid	09/22/2020	CG	00002	0.4	270	$ 108.00	177303	$ 108.00	Draft memorandum to Board regarding Phelan litigation closed session.
Paid	09/22/2020	TEM	00002	0.5	395	$ 197.50	177303	$ 197.50	Conference regarding Phelan's proposal to transfer water in lieu of payment of RWAs; review order from appellate court regarding appeal; review docket regarding status of same.
Paid	09/30/2020	CG	00002	1.1	270	$ 297.00	177303	$ 297.00	Review strategy for recommendation to Board upon consideration of Phelan transfer request; conference call with Watermaster Engineer regarding same.
Paid	10/01/2020	CAP	00002	1.5	395	$ 592.50	178197	$ 592.50	Work on transfer issues proposed by Phelan and review R&Rs and Judgment on the topic of transfers.
Paid	10/07/2020	TEM	00002	0.4	395	$ 158.00	178197	$ 158.00	Confer with court clerk regarding oral argument; review file regarding status of appeals.
Paid	10/08/2020	TEM	00002	0.3	395	$ 118.50	178197	$ 118.50	Review reply briefs filed in appeal.
Paid	10/13/2020	TEM	00002	1.5	395	$ 592.50	178197	$ 592.50	Review order regarding oral argument; confer with court clerk regarding same; correspondence regarding same; conference regarding Phelan's proposal for complying with judgment; review memoranudm regarding same.
Paid	10/14/2020	CG	00002	1.4	270	$ 378.00	178197	$ 378.00	Draft memorandum to Board regarding Phelan transfer request; legal research regarding same; review Watermaster Engineer cover letter regarding transfer application.
Paid	10/15/2020	CG	00002	0.2	270	$ 54.00	178197	$ 54.00	Conference call with Watermaster Engineer regarding memoranda to Board regarding Phelan transfer request.
Paid	10/16/2020	TEM	00002	1.3	395	$ 513.50	178197	$ 513.50	Review and revise memorandum regarding Phelan proposal; review judgment regarding same; conference regarding same.
Paid	10/22/2020	TEM	00002	0.4	395	$ 158.00	178197	$ 158.00	Conference regarding Phelan's proposal to satisfy judgment.
Paid	10/27/2020	CG	00002	0.5	270	$ 135.00	178197	$ 135.00	Research regarding Tierra Bonita transfer application; telephone call with Tierra Bonita counsel regarding same.
Paid	10/28/2020	TEM	00002	1.3	395	$ 513.50	178197	$ 513.50	Correspondence regarding oral argument for first phase of appeals; review docket and briefs regarding same; make arrangements for participation in oral argument; correspondence regarding same.
Paid	11/09/2020	TEM	00002	2.5	395	$ 987.50	179077	$ 987.50	Review briefs and monitor oral arguments for Phelan appeal; conferences and correspondence regarding same; prepare memorandum regarding oral argument.
Paid	11/25/2020	TEM	00002	2.1	395	$ 829.50	179077	$ 829.50	Review order from appellate court regarding Phelan appeals; review docket and files regarding same; conference regarding same; prepare letter brief regarding same.
Paid	11/30/2020	TEM	00002	0.8	395	$ 316.00	179077	$ 316.00	Investigation regarding status of second Phelan appeal; confer with court clerk regarding same; conference regarding same

Status	Date	Time keeper	Matter	Hours	Rate	Amount	Bill	Billed Amount	Narrative
Paid	12/08/2020	TEM	00002	0.3	395	$ 118.50	179950	$ 118.50	Conference regarding bifurcation of appeal; correspondence regarding same.
Paid	12/09/2020	TEM	00002	1.5	395	$ 592.50	179950	$ 592.50	Review appellate court opinion concerning Phelan's appeal; conference regarding same; prepare analysis of opinion and future appellate review.
Paid	12/10/2020	TEM	00002	2.6	395	$ 1,027.00	179950	$ 1,027.00	Complete summary of court of appeal opinion and future steps in appeal.
Paid	12/31/2020	TEM	00002	0.3	395	$ 118.50	179950	$ 118.50	Inquiry regarding status of Phelan's petition for rehearing; conference regarding same.
Paid	02/17/2021	TEM	00002	0.5	395	$ 197.50	181717	$ 197.50	Review docket and appeal documents regarding status and issues on appeal ; prepare memorandum regarding same.
Paid	03/16/2021	TEM	00002	1.1	395	$ 434.50	182601	$ 434.50	Prepare appendix for appeal; correspondence with opposing counsel regarding same.
Paid	03/17/2021	TEM	00002	1.1	395	$ 434.50	182601	$ 434.50	Prepare appendix and respondent's brief for Phelan appeal.
Paid	03/24/2021	TEM	00002	1.3	395	$ 513.50	182601	$ 513.50	Research regarding RWAs claims against Phelan.
Paid	04/19/2021	CG	00002	0.8	270	$ 216.00	183542	$ 216.00	Legal research regarding litigation mechanism for enforcement action against Phelan for delinquent assessments; draft motion regarding same.
Paid	04/20/2021	TEM	00002	1.6	395	$ 632.00	183542	$ 632.00	Status review of Phelan appeal; prepare respondent's brief.
Paid	04/21/2021	CG	00002	2.5	270	$ 675.00	183542	$ 675.00	Draft motion to collect RWAs; legal research regarding same.
Paid	04/21/2021	TEM	00002	1.5	395	$ 592.50	183542	$ 592.50	Review order from court of appeal; correspondence regarding same; prepare respondent's brief.
Paid	04/22/2021	CG	00002	6	270	$ 1,620.00	183542	$ 1,620.00	Draft motion to collect RWAs; legal research regarding same.
Paid	04/22/2021	TEM	00002	2.8	395	$ 1,106.00	183542	$ 1,106.00	Prepare motion to enforce judgment against Phelan; legal research regarding same.
Paid	04/23/2021	TEM	00002	4.4	395	$ 1,738.00	183542	$ 1,738.00	Prepare motion for recovery of RWAs; prepare respondent's brief.
Paid	04/27/2021	TEM	00002	1.4	395	$ 553.00	183542	$ 553.00	Prepare motion for recovery of RWAs.
Paid	04/28/2021	TEM	00002	4.5	395	$ 1,777.50	183542	$ 1,777.50	Investigation regarding status of Phelan appeal; prepare memorandum regarding same; prepare respondents' brief; prepare motion to collect RWAs.
Paid	04/29/2021	TEM	00002	2.7	395	$ 1,066.50	183542	$ 1,066.50	Prepare motion for monetary, declaratory and injunctive relief; conferences regarding same.
Tagged	05/03/2021	TEM	00002	2.5	395	$ 987.50	184478	$ 987.50	Review and summarize appellate court's December 19, 2020 opinion
Tagged	05/05/2021	CG	00002	0.1	270	$ 27.00	184478	$ 27.00	Research regarding updates/revisions to motion to collect RWAs; finalize for circulation to clients.
Tagged	05/05/2021	TEM	00002	2.9	395	$ 1,145.50	184478	$ 1,145.50	Prepare enforcement motion; correspondence regarding same; research recovery of attorneys' fees
Tagged	05/06/2021	CG	00002	0.1	270	$ 27.00	184478	$ 27.00	Draft updates to Phelan enforcement motion per client comments/feedback.
Tagged	05/06/2021	TEM	00002	1	395	$ 395.00	184478	$ 395.00	Review Phelan's appellant's opening brief
Tagged	05/13/2021	CG	00002	0.3	270	$ 81.00	184478	$ 81.00	Draft revisions to motion to collect RWAs per client spreadsheet of RWAs and Production amounts.
Tagged	05/18/2021	TEM	00002	1.8	395	$ 711.00	184478	$ 711.00	Prepare respondent's brief
Tagged	05/21/2021	CG	00002	1.4	270	$ 378.00	184478	$ 378.00	Finalize enforcement motion; correspondence with clients regarding same.
Tagged	05/24/2021	CG	00002	0.2	270	$ 54.00	184478	$ 54.00	Finalize motion to collect RWAs; correspondence with Watermaster staff regarding same, May closed session.
Tagged	05/24/2021	TEM	00002	0.7	395	$ 276.50	184478	$ 276.50	Prepare enforcement motion; conferences regarding same.
Tagged	05/25/2021	TEM	00002	2.9	395	$ 1,145.50	184478	$ 1,145.50	Research regarding appeal and motion to enforce; prepare same; correspondence with Ms. Ailin regarding appeal; prepare stipulation and order regarding briefing schedule.
Tagged	05/26/2021	TEM	00002	2.1	395	$ 829.50	184478	$ 829.50	Correspondence with appellant regarding brief; legal research regarding same; prepare stipulation regarding same; review appellant's appendix.
Grand Totals:				225.7		$ 83,785.50		$81,075.00	

COSTS

Status	Date	Time keeper	Matter	Expense Code	Quantity	Amount	Bill	Billed Total	Narrative
	11/15/2019	CAP	2	SVC	158.02	$ 158.02	168273	$ 158.02	First Legal - Service Of Process E filing service of opposition to Phelan Pinon motion for Dedaratory relief.
	12/10/2019	CAP	00002	SVC	71.02	$ 71.02	169947	$ 71.02	First Legal - Service Of Process E filing service fee for Notice of Entry of Order re Phelon Pinon
	02/26/2020	CAP	00001	DS	15.43	$ 15.43	170853	$ 15.43	Federal Express Corporation - Delivery Service Sender: Timothy Metzinger Recipinet: June S. Ailen, Esq; Aleshire & Wynder LLP
Grand Totals:						$ 244.47		$ 244.47	

Exhibit 6

SAN BERNARDINO COUNTY

Tax Collector Fee Schedule

Fiscal Year 2020/21
Effective July 1, 2020

268 West Hospitality Lane, First Floor
San Bernardino, CA 92415-0360
Hours: 8 AM to 5 PM; Monday-Friday

TAX COLLECTION		
Description	Code	Fee
Returned Item Charge	County Ordinance §16.0203A (q)	$36.00
Special Programming Requests	County Ordinance §16.0203A (r)	Actual Costs
Certification of Records	County Ordinance §16.0203A (s)	$ 21.00
Tax Status Report	County Ordinance §16.0203A (t)	$ 11.00 Per Parcel/Per Year
Tax Clearance Certificate - Subsequent	County Ordinance §16.0203A (u)	$ 33.00
Duplicate Tax Clearance Certificate	County Ordinance §16.0203A (v)	$ 21.00
Duplicate Release of Lien	County Ordinance §16.0203A (w)	$ 10.00
Application for Separate Valuation	County Ordinance §16.0203A (x)	$ 104.00
Delinquent Tax Installment Plan (5 Year)	County Ordinance §16.0203A (y)	$ 75.00
Escaped Tax Installment Plan (4 Year)	County Ordinance §16.0203A (z)	$ 75.00
Unsecured Delinquency Processing Fee	County Ordinance §16.0203A (aa)	$ 28.00
Unsecured Default Processing Fee	County Ordinance §16.0203A (bb)	$ 98.00
Unsecured Partial Payment Processing Fee	County Ordinance §16.0203A (cc)	$ 50.00
Unsecured Field Call	County Ordinance §16.0203A (dd)	$ 275.00
Bank Account Seizure Fee	County Ordinance §16.0203A (ee)	$ 59.00
Delinquent Penalty	Revenue and Taxation Code §2617 & §2618	10% of Tax Amount
Cost for Delinquency Notice	Revenue and Taxation Code §2621	$ 10.00
Redemption Fee	Revenue and Taxation Code §4102(d)	$ 15.00
Redemption Penalties	Revenue and Taxation Code §4103(a)	Interest at the Rate of 1.5% of the Defaulted Taxes Applied the 1st of Each Month to the Time of Redemption

TAX SALE		
Description	Code	Fee
Tax Sale – Cost of Notice	County Ordinance §16.0203A (ff)	$ 164.00
Tax Sale – Party of Interest Search Fee	County Ordinance §16.0203A (gg)	$ 506.00
Tax Sale Personal Contact Fee	County Ordinance §16.0203A (hh)	$ 110.00 Per Parcel With Improvement
Tax Sale Brochure – Consolidated	County Ordinance §16.0203A (ii)	$ 81.00
Tax Sale Maps	County Ordinance §16.0203A (jj)	$ 188.00
Tax Sale Brochure and Maps – CD	County Ordinance §16.0203A (kk)	$ 120.00
Tax Sale Bid Deposit Processing Fee	County Ordinance §16.0203A (ll)	$ 35.00
Tax Sale Property Sold Listing	County Ordinance §16.0203A (mm)	$ 104.00
Excess Proceeds Listing	County Ordinance §16.0203A (nn)	$ 113.00

Exhibit 7

RESOLUTION NO. R-19-27

ADOPTING REPLACEMENT WATER ASSESSMENTS FOR YEARS 2016, 2017 and 2018 FOR ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATION

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment ("Judgment"), Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, is to administer the Judgment; and

WHEREAS, the Judgment provides that the Watermaster shall calculate, assess and collect Replacement Water Assessments pursuant to Section 9.2 of the Judgment; and

WHEREAS, the Watermaster has taken and considered public comment on the issue and has calculated that a Replacement Water Assessment of $415 an acre foot for Producers within the Antelope Valley State Water Contractors Association ("AVSWCA") boundaries in Years 2016 and 2017, and a Replacement Water Assessment of $888 an acre foot for Producers outside the AVSWCA boundaries for Year 2016, $896 an acre foot for Year 2017, and $914 an acre foot for Year 2018, which are reflective of the proportional share of State Water Project fixed costs applicable to those Producers outside the AVSWCA boundaries, are consistent with the terms of the Judgment and are based on the actual cost of Replacement Water, including Watermaster spreading costs; and

WHEREAS, these Producers will also be responsible for applicable Administrative Assessments in addition to a Replacement Water Assessment.

NOW, THEREFORE, BE IT RESOLVED, that the Watermaster Board unanimously adopts a Replacement Water Assessment for Years 2016 and 2017 in the amount of $415 an acre foot for Producers within the AVSWCA boundaries, and a Replacement Water Assessment in the amount of $888 an acre foot in 2016, $896 an acre foot for Year 2017, and $914 an acre foot for Year 2018, for Producers outside the AVSWCA boundaries.

I certify that this is a true copy of Resolution No. R-19-27 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held August 28, 2019, in Palmdale, California.

Date: 8/28/19

Robert Parris, Chairman

ATTEST: Patricia Rose

Patricia Rose – Secretary

AV State Water Contractors Boundaries

	Inside		Outside
2019	$451.00		$948.00
2018	$415.00		$914.00
2017	$415.00		$896.00
2016	$415.00		$888.00

ANTELOPE VALLEY WATERMASTER BOARD MEMORANDUM

DATE: August 21, 2019

TO: ANTELOPE VALLEY WATERMASTER BOARD

FROM: Mr. Matthew Knudson, Administrator
Mr. Peter Thompson, Jr., Assistant Administrator

RE: ***SETTING REPLACEMENT WATER ASSESSMENT RATES FOR 2016 AND 2017 PRODUCTION WITHIN AND OUTSIDE OF THE ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATION BOUNDARIES; AND 2018 PRODUCTON OUTSIDE THE ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATION BOUNDARIES***

Recommendation:

Antelope Valley Watermaster Administrative staff recommends the Board Approve Resolution No. R-19-x, which sets the following Replacement Water Assessment Rates for producers inside and outside of the Antelope Valley State Water Contractors Association (AVSWCA) boundaries:

Calendar Year	*Inside AVSWCA Boundaries*	*Outside AVSWCA Boundaries*
2016	$415/Ac-Ft	$888/Ac-Ft.
2017	$415/Ac-Ft.	$896/Ac-Ft.
2018	Previously Approved	$914/Ac-Ft.

The Antelope Valley Watermaster Board previously approved Resolution No.'s R-18-08, R-19-10, and R-19-11 which set the following Replacement Water Assessment Rates:

Calendar Year	*Inside AVSWCA Boundaries*	*Outside AVSWCA Boundaries*
2018	$415/Ac-Ft.	See above
2019	$451/Ac-Ft.	$948/Ac-Ft.

Background:

The Antelope Valley Watermaster is compelled by the court to require groundwater pumpers to replace water in the Antelope Valley Groundwater Basin when they have pumped over their adjudicated right. The AVSWCA member agencies will be a primary source for providing this replacement water due to their collective ability to import water and recharge the basin. To this end, AVSWCA contracted with Raftelis to determine a rate structure that included replacement costs for pumpers both inside and outside of the AVSWCA collective service area. This is important as those pumpers within our service area have helped pay the fixed costs of the State Water Project (SWP) through their property taxes while those outside have not. The cost for

replacement water to be charged to pumpers is based on cost to deliver raw water plus an additional 10% to capture the loss of water expected when recharging the replacement water. Pumpers outside of our service areas will pay this rate plus a charge to cover their proportional share of SWP fixed costs.

Raftelis has provided the AVSWCA with the financial model that allows staff to update it on an annual basis to account for changes in the average consumer price index and the annual fixed costs and deliveries as updated in the Department of Water Resources' annual Bulletin 132.

Exhibit 8

Antelope Valley Watermaster
P.O. Box 3025
Quartz Hill, CA 93586
(661) 234-8233
www.avwatermaster.net

BILL TO
Phelan Pinon Hills CSD
4176 Warbler Rd.
Phelan, CA 92371

INVOICE 1650CY19-1RWA

DATE 07/15/2019

DUE DATE 08/14/2019

TYPE	DESCRIPTION	ACRE FT.	RATE	AMOUNT
RWA	2016 Replacement Water Assessment within Adjudicated Boundaries	770.63	888.00	684,319.44
RWA	2017 Replacement Water Assessment within Adjudicated Boundaries	385.18	896.00	345,121.28
RWA	2018 Replacement Water Assessment within Adjudicated Boundaries	176.83	914.00	161,622.62

Charges are based on being outside the AVSWCA Boundaries.

Please include invoice number on check payment.

PLEASE NOTE: Delinquent balances will be assessed a 10% late fee.

TOTAL DUE **$1,191,063.34**

Per Resolution No. R-19-27 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held August 28, 2019, in Palmdale, California

and

Judicial Council Coordination Proceeding No. 4408 Santa Clara Case No.: 1-05-CV-049053

PLEASE REMIT PAYMENT TO:
Antelope Valley Watermaster
P.O. Box 3025
Quartz Hill, CA 93586

EXHIBIT 14

Exhibit 9

RESOLUTION NO. R-19-11

ADOPTING REPLACEMENT WATER ASSESSMENTS FOR YEAR 2019

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment ("Judgment"), Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, is to administer the Judgment; and

WHEREAS, the Judgment provides that the Watermaster shall calculate, assess and collect Replacement Water Assessments pursuant to Section 9.2 of the Judgment; and

WHEREAS, the Watermaster has taken and considered public comment on the issue and has calculated that a Replacement Water Assessment of $451 an acre foot for Producers within the Antelope Valley State Water Contractors Association ("AVSWCA") boundaries, and a Replacement Water Assessment of $948 an acre foot for Producers outside the AVSWCA boundaries which is reflective of the proportional share of State Water Project fixed costs applicable to those Producers outside the AVSWCA boundaries, are consistent with the terms of the Judgment and are based on the actual cost of Replacement Water, including Watermaster spreading costs; and

WHEREAS, these Producers will also be responsible for applicable Administrative Assessments in addition to a Replacement Water Assessment.

NOW, THEREFORE, BE IT RESOLVED, that the Wastermaster Board unanimously adopts a Replacement Water Assessment for Year 2019 in the amount of $451 an acre foot for Producers within the AVSWCA boundaries, and a Replacement Water Assessment in the amount of $948 an acre foot for Producers outside the AVSWCA boundaries.

I certify that this is a true copy of Resolution No. R-19-11 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held April 24, 2019, in Palmdale, California.

Date: April 24, 2019

Robert Parris, Chairman

ATTEST: Patricia Rose

Patricia Rose – Secretary

ANTELOPE VALLEY
STATE WATER CONTRACTORS ASSOCIATION

Financial Analysis Study for Replacement Water Assessment

Final Report / March 6, 2019

RAFTELIS

RAFTELIS

March 6, 2019

Mr. Matthew Knudson
General Manager
Antelope Valley State Water Contractors Association
2029 East Avenue Q
Palmdale, CA 93550

Subject: Financial Analysis Study for Replacement Water Assessment

Dear Mr. Knudson,

Raftelis Financial Consultants, Inc. (Raftelis) is pleased to provide this Financial Analysis Study for Replacement Water Assessment Report (Report) for the Antelope Valley State Water Contractors Association (AVSWCA). The primary objective of the study was to perform a financial analysis of the imported water costs associated with AVSWCA's groundwater basin recharge, and to develop Replacement Water Assessment fees to be assessed to property owners or agencies outside of AVSWCA's service area.

This Report summarizes the key findings and recommendations related to the financial analysis conducted as part of the study. It has been a pleasure working with you, and we thank you and other key staff from Antelope Valley-East Kern Water Agency, Littlerock Creek Irrigation District, and Palmdale Water District for the support provided during the course of this study.

Sincerely,
Raftelis Financial Consultants, Inc.

Sudhir Pardiwala
Executive Vice President

Charles Diamond
Consultant

445 S. Figueroa Street, Suite 2270
Los Angeles, CA 90071
www.raftelis.com

Table of Contents

List of Tables

List of Figures

Introduction

The Antelope Valley State Water Contractors Association (AVSWCA) is a joint powers authority created in 1999 to optimize the use of water resources and to protect surface water and groundwater storage within the Antelope Valley. AVSWCA's three member agencies include the Antelope Valley-East Kern Water Agency (AVEK), Littlerock Creek Irrigation District (LCID), and Palmdale Water District (PWD). Each of the member agencies has a contract with the California Department of Water Resources for entitlement to and delivery of imported water from the State Water Project (SWP).

The AVSWCA's service area lies within the adjudicated Antelope Valley Groundwater Basin. As part of the adjudication judgement, the Antelope Valley Watermaster is tasked with determining the amount of imported Replacement Water from the SWP to be used to recharge the groundwater basin in order to ensure that that the basin's Total Safe Yield is not exceeded. Imported SWP water to be utilized as Replacement Water will be purchased from AVSWCA's member agencies or other entities. AVSCWA is therefore interested in determining the per acre-foot (AF) cost for Replacement Water Assessments to be charged to groundwater producers within and surrounding its service area who do not have any entitlement in the SWP or rights in the Groundwater Basin.

Property owners subject to the proposed Replacement Water Assessments that reside within the service areas of AVSCWA's three member agencies contribute to the recovery of SWP capital costs through property taxes. However, property owners outside of the three member agencies' service areas (herein referred to as "Outside Users") do not own any entitlement rights and do not contribute to SWP costs. Therefore, it is appropriate for Replacement Water Assessments to be charged to Outside Users who are not SWP members or own rights in the Groundwater Basin. Although AVSWCA has preliminarily set the Replacement Water Assessment fee for groundwater users within its member agencies' service areas at $415 per acre-foot for 2018, Replacement Water Assessment fees for Outside Users have to be developed.

The AVSWCA engaged Raftelis Financial Consultants, Inc. (Raftelis) in 2018 to conduct a Financial Analysis Study for Replacement Water Assessment (Study). The primary objective of the Study was to conduct financial analyses necessary to develop the proposed Replacement Water Assessments for Outside Users related to AVSWCA's groundwater recharge activities. This Financial Analysis Study for Replacement Water Assessment Report (Report) details the analysis performed by Raftelis as well as all results and recommendations.

Methodology & Assumptions

METHODOLOGY

Based on discussions with staff from each of AVSWCA's member agencies, Raftelis recommends establishing Replacement Water Assessment fees for Outside Users based on fixed cost payments made by each member agency to the California Department of Water Resources for the importation of SWP water as well as the variable cost associated with delivering Replacement Water. The member agencies and the property owners within their service areas continue to fund the fixed costs associated with importing SWP water. Therefore, if any SWP water entitlement of the three member agencies is utilized as Replacement Water by Outside Users, it is reasonable and equitable for the Outside Users to pay a Replacement Water Assessment based in part on the investments of the SWP members. AVSWCA's member agencies have been paying the capital costs of the SWP since the 1960s. The present value of those investments in the SWP should be accounted for in determining a fair price for the Replacement Water.

The primary steps required to calculate the proposed Replacement Water Assessment to charge to Outside Users are outlined below:

1. Calculate the unit rate designed to recover SWP fixed costs:
    a) Determine the present value of SWP fixed costs through 2017 (delivery data, used in the analysis, was available through 2017) for all three member agencies as defined in Tables A, C, D, E, F, and G of each member agencies' water supply contract with the California Department of Water Resources. The SWP fixed costs included are the Capital Cost Component of the Transportation Charge, the Minimum OMP&R Component of the Transportation Charge, Delta Water Charges, Water System Revenue Bond Surcharge and Off-Aqueduct Power Facilities costs. The capital costs in each year is then converted to 2018 dollars using an average cost escalation factor of 3.9 percent which is equal to the average annual increase in the Consumer Price Index (CPI) between 1962 and 2017 as shown below in Table 1.

Table 1: Annual Cost Escalation

Key Assumption	Value	Notes
Annual Cost Escalation	3.90%	*Average CPI from 1962 to 2017*

    b) Calculate the fixed payment per acre-foot by dividing the result from Step 1a by total SWP deliveries received through 2017 across all three member agencies. This number represents the value of the SWP delivered water in dollars per acre-foot. This would represent the approximate value of purchasing SWP water entitlement and the corresponding deliveries.

2. Calculate the unit rate designed to recover variable water costs:
    a) Take the existing Untreated Water Availability Charge rate in dollars per acre-foot for agricultural water delivered under terms of water service agreements through AVEK-owned facilities and adjust to account for 10% water loss due to leakage.

3. Add the SWP fixed cost unit rate from Step 1 and the variable cost unit rate from Step 2 to determine the Replacement Water Assessment for Outside Users to be charged by AVSWCA.

The following key inputs were utilized to calculate the proposed Water Replacement Assessment fees presented in this Report. Firstly, total SWP deliveries through 2017 to each member agency are shown below in **Table 2**. AVEK and LCID first began receiving SWP water in 1972, while PWD began receiving SWP water in 1985. Information on SWP deliveries was provided to Raftelis by member agency staff.

Table 2: Total SWP Deliveries through 2017 in Acre-Feet

Member Agency	SWP Deliveries
AVEK	2,242,419 AF
LCID	13,310 AF
PWD	338,659 AF
Total	**2,594,388 AF**

Analysis & Results

This section outlines the calculation of the proposed Replacement Water Assessment for AVSWCA. Table 3 below shows the determination of the present value of total annual SWP fixed cost payments for each member agency through 2017. As stated previously, SWP fixed costs included in this analysis are the Capital Cost Component of the Transportation Charge, the Minimum OMP&R Component of the Transportation Charge, Delta Water Charges, Water System Revenue Bond Surcharges, and Off-Aqueduct Power Facilities costs. Each of these annual costs in nominal USD are contained in Tables A, C, D, E, F, and G of each member agency's Water Supply Contract with the California Department of Water Resources. Raftelis then converted these costs into 2018 USD assuming annual cost escalation of 3.90% (as shown previously in **Table 1**). Table 3 below shows a summary of total SWP fixed cost payments through 2017 for each member agency in both nominal and 2018 USD. Please refer to Appendices A, B, and C for detailed SWP fixed costs by year and category for AVEK, LCID, and PWD respectively.

Table 3: Present Value of SWP Fixed Costs

Member Agency	Total SWP Fixed Cost Payments (Nominal)	Present Value of Total SWP Fixed Cost Payments (2018 USD)
AVEK	$518,309,936	$1,110,446,654
LCID	$8,009,081	$17,901,835
PWD	$77,201,475	$160,873,533
Total	**$602,520,492**	**$1,289,222,022**

Table 4 below shows the development of SWP fixed cost payments per acre-foot of delivery for AVSWCA's member agencies. The present value of total SWP fixed cost payments (from Table 3) is simply divided by the SWP entitlements in acre-feet (from Table 2) to arrive at unit cost per acre-foot. This result represents the unit rate to recover SWP fixed costs as described previously in Step 1b on page 2. The SWP fixed cost unit rate constitutes the first of two rate components used to determine the proposed Replacement Water Assessment.

Table 4: Calculation of Unit Rate to Recover SWP Fixed Costs

Line	Description	Amount	Notes/Source
1	Present Value of Total SWP Fixed Cost Payments	$1,289,222,022	Table 3
2	Total SWP Deliveries	2,594,388 AF	Table 2
3	**SWP Fixed Cost Unit Rate**	**$496.93 / AF**	**= [Line 1] / [Line 2]**

The second of the two rate components used to determine the proposed Replacement Water Assessment is the variable cost unit rate. This unit rate is designed to recover the variable cost of Replacement Water and is determined by taking the 2019 Untreated Water Availability Charge rate of $406 per AF for agricultural water delivered under terms of water service agreements through AVEK-owned facilities and adjusting to account for an assumed 10% of water loss due to the recharge process. This calculation is shown in Equation 1 below.

$$\textbf{Equation 1: } \textit{Variable Cost Unit Rate} = \frac{\$406/AF}{100\% - 10\%} = \$451.11/AF$$

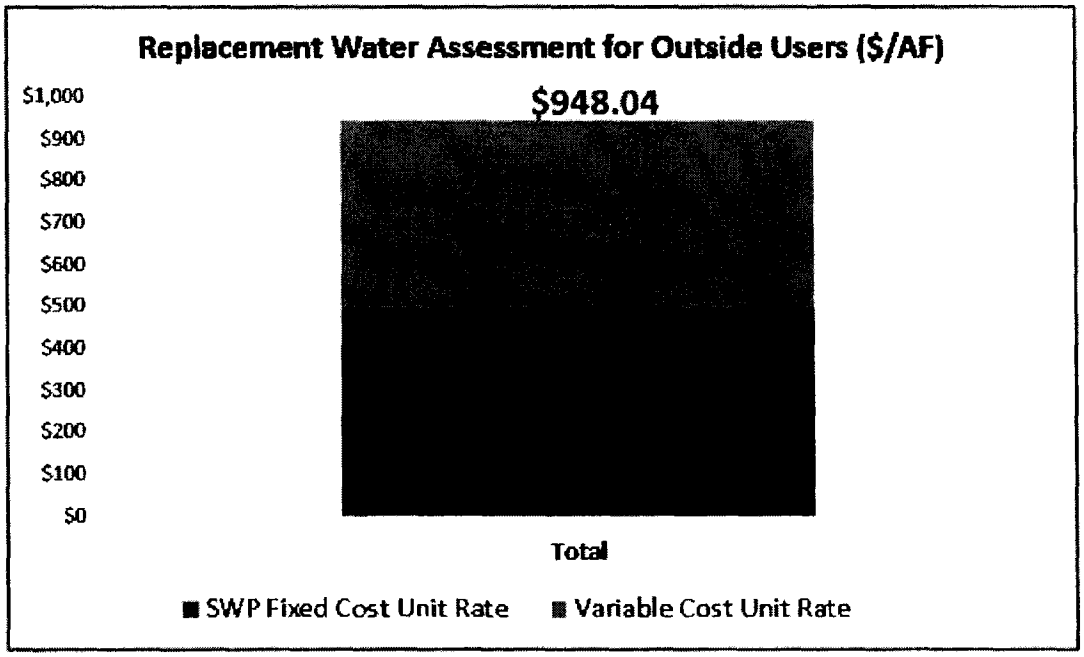
The proposed Replacement Water Assessment for Outside Users is determined by simply adding the SWP fixed cost unit rate (from Line 3 in Table 4) to the variable cost unit rate shown in Equation 1. The proposed Replacement Water Assessments for Outside is shown below in Table 5.

Table 5: Proposed Replacement Water Assessment for Outside Users

Line	Description	Amount	Notes/Source
1	SWP Fixed Cost Unit Rate	$496.93 / AF	Table 4
2	Variable Cost Unit Rate	$451.11 / AF	Equation 1
3	Proposed Replacement Water Assessment	$948.04 / AF	= [Line 1] + [Line 2]

Figure 1 shows the proposed Replacement Water Assessment per acre-foot, as determined above in Table 5. The proposed Replacement Water Assessment of $948.04 per acre-foot is split relatively evenly between the SWP fixed cost unit rate (52.4%) and variable cost unit rate (47.6%).

Figure 1: Proposed Replacement Water Assessment for Outside Users



APPENDIX A: SWP FIXED COSTS - AVEK

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
ANTELOPE VALLEY-EAST KERN WATER AGENCY

(in dollars except w here otherw ise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total Fixed Payments (Nominal)	RAFTELIS CALCULATED: Total Fixed Payments in 2018 $
	Capital Costs (Table D)		Minimum OMP&R Component (Table E & G)					
	Annual Payment of Principal	Annual Interest Payment						
1960	-	-	-	-	-	-	-	-
1961	-	-	-	-	-	-	-	-
1962	-	-	-	-	-	-	-	-
1963	3,656	46,476	-	-	-	-	50,132	411,121
1964	7,020	75,472	-	-	-	-	82,492	651,106
1965	13,398	47,551	-	-	-	-	60,949	463,010
1966	24,589	178,207	-	-	-	-	202,796	1,482,750
1967	47,671	250,066	-	-	-	-	297,737	2,095,201
1968	77,671	591,387	114,164	-	-	-	783,222	5,304,717
1969	114,658	867,559	88,040	-	-	-	1,070,257	6,976,698
1970	152,774	1,166,566	135,082	-	-	-	1,454,422	9,125,081
1971	188,395	1,053,317	186,373	-	-	-	1,428,085	8,623,524
1972	211,795	1,406,105	377,265	160,756	-	-	2,155,921	12,529,912
1973	227,084	1,734,633	461,155	222,207	-	-	2,645,079	14,795,794
1974	239,569	1,690,415	164,921	279,090	-	-	2,373,995	12,780,972
1975	253,219	1,507,558	574,928	319,822	-	-	2,655,527	13,760,026
1976	266,367	1,481,561	405,268	431,018	-	-	2,584,214	12,887,880
1977	280,012	1,476,986	638,666	469,922	-	-	2,865,586	13,754,693
1978	294,057	1,496,166	693,608	600,180	-	-	3,084,011	14,247,472
1979	309,317	1,480,783	712,340	720,173	-	-	3,222,613	14,328,955
1980	325,592	1,477,558	1,000,550	857,818	-	-	3,661,518	15,669,386
1981	351,120	2,268,109	733,695	1,355,100	-	-	4,708,024	19,391,613
1982	366,401	938,765	1,436,719	1,551,434	-	-	4,293,319	17,019,738
1983	392,086	1,617,658	2,407,048	1,110,994	-	1,083,881	6,611,667	25,226,392
1984	421,808	2,625,413	2,004,478	450,405	-	2,499,848	8,001,952	29,384,923
1985	449,800	1,790,324	1,944,232	565,881	-	3,749,257	8,499,494	30,040,430
1986	475,597	1,745,690	2,206,227	635,066	-	3,159,857	8,222,437	27,970,361
1987	502,492	1,782,829	2,533,025	652,450	-	3,167,759	8,638,555	28,282,844
1988	527,761	1,813,260	2,193,438	711,641	64,266	2,688,113	7,998,479	25,204,253
1989	553,780	1,824,686	3,193,094	2,083,593	205,668	2,357,669	10,218,490	30,991,144
1990	586,519	1,815,427	1,719,784	2,207,667	185,010	2,528,625	9,043,032	26,396,686

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
ANTELOPE VALLEY-EAST KERN WATER AGENCY

(in dollars except w here otherw ise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total Fixed Payments (Nominal)	RAFTELIS CALCULATED: Total Fixed Payments In 2018 $
	Capital Costs (Table D)							
	Annual Payment of Principal	Annual Interest Payment	Minimum OMP&R Component (Table E & G)					
1991	616,476	1,785,880	2,644,074	2,454,678	296,854	1,048,414	8,848,376	24,858,983
1992	653,283	1,773,406	2,998,849	2,804,695	402,015	2,760,199	11,392,447	30,805,003
1993	688,496	1,666,698	2,667,894	2,811,318	424,871	3,559,487	11,818,764	30,758,188
1994	725,604	1,639,187	2,922,011	2,694,116	424,023	3,963,982	12,368,923	30,981,685
1995	763,215	1,652,147	3,088,320	2,883,156	500,084	4,324,009	13,210,931	31,848,649
1996	802,713	1,565,704	3,333,727	2,834,460	606,388	3,572,856	12,715,848	29,504,440
1997	842,729	1,624,187	3,322,103	3,133,957	626,151	3,411,379	12,960,506	28,943,327
1998	886,136	1,605,665	3,270,632	3,155,093	602,091	3,977,988	13,497,605	29,011,332
1999	929,559	1,593,859	4,090,299	3,262,870	826,108	3,696,973	14,399,668	29,788,448
2000	975,533	1,528,659	4,232,460	3,314,278	940,325	2,372,130	13,363,385	26,607,026
2001	1,022,242	1,512,697	4,040,411	3,315,004	925,355	2,680,895	13,496,604	25,863,590
2002	1,078,342	1,658,005	3,949,101	3,437,351	974,814	1,668,457	12,766,070	23,545,395
2003	1,130,557	1,579,003	5,598,522	3,365,016	1,015,056	1,445,146	14,133,300	25,088,621
2004	1,183,761	1,530,822	2,549,377	3,333,008	1,016,092	1,813,317	11,426,377	19,522,086
2005	1,239,565	1,489,361	2,664,386	3,461,814	959,268	2,047,638	11,862,032	19,505,685
2006	1,300,414	1,427,276	4,436,843	3,507,524	1,038,026	2,845,985	14,556,068	23,037,251
2007	1,366,303	1,373,827	4,762,823	3,855,524	666,215	2,990,954	15,015,646	22,872,574
2008	1,434,161	1,334,202	5,654,630	3,943,904	999,433	3,547,772	16,914,102	24,797,301
2009	1,503,269	1,373,641	3,726,039	4,310,140	1,080,062	3,357,450	15,350,601	21,660,342
2010	1,585,038	1,297,433	5,686,181	5,385,764	1,033,467	4,321,133	19,309,016	26,223,130
2011	1,672,991	1,250,140	4,229,644	5,928,431	1,116,181	4,952,954	19,150,341	25,031,412
2012	1,758,667	1,210,162	4,248,790	6,189,558	1,090,934	5,401,397	19,899,508	25,034,310
2013	1,812,060	1,128,915	6,343,556	6,550,942	1,186,869	2,563,236	19,585,578	23,714,509
2014	1,899,283	1,533,728	5,209,033	6,368,143	1,345,233	1,148,978	17,504,398	20,399,023
2015	1,954,611	1,479,091	9,320,182	8,666,793	1,288,246	530,003	23,238,926	26,065,298
2016	1,978,002	1,495,875	7,174,136	10,359,280	1,287,598	153,406	22,448,297	24,233,408
2017	1,906,927	1,461,139	5,510,660	9,976,357	1,186,800	120,731	20,162,614	20,948,956

APPENDIX B: SWP FIXED COSTS – LCID

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
Littlerock Creek Irrigation District

(in dollars except where otherwise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total Fixed Payments (Nominal)	RAFTELIS CALCULATED: Total Fixed Payments in 2018 $
	Capital Costs (Table D)							
	Annual Payment of Principal	Annual Interest Payment	Minimum OMP&R Component (Table E & G)					
1960	-	-	-	-	-	-	-	-
1961	-	-	-	-	-	-	-	-
1962	-	-	-	-	-	-	-	-
1963	-	-	-	-	-	-	-	-
1964	121	1,249	-	-	-	-	1,370	10,813
1965	227	1,459	-	-	-	-	1,686	12,808
1966	415	3,633	-	-	-	-	4,048	29,597
1967	809	4,875	-	-	-	-	5,684	39,999
1968	1,324	10,347	1,910	-	-	-	13,581	91,983
1969	1,966	15,024	1,474	-	-	-	18,464	120,362
1970	2,713	21,477	2,255	-	-	-	26,445	165,917
1971	3,413	20,231	3,119	-	-	-	26,763	161,609
1972	3,832	27,037	7,548	1,367	-	-	39,784	231,219
1973	4,113	31,568	9,581	2,577	-	-	47,839	267,597
1974	4,336	32,674	2,049	3,721	-	-	42,780	230,316
1975	4,580	26,656	10,631	4,752	-	-	48,619	251,927
1976	4,818	27,596	6,508	6,269	-	-	45,191	225,375
1977	5,063	28,048	11,038	6,861	-	-	51,010	244,846
1978	5,317	28,623	12,422	9,687	-	-	56,049	258,934
1979	5,590	28,167	12,223	11,889	-	-	57,869	257,307
1980	5,880	28,087	17,113	14,256	-	-	65,336	279,604
1981	6,327	42,699	13,032	22,946	-	-	85,004	350,118
1982	6,605	17,926	26,245	26,335	-	-	77,111	305,686
1983	7,051	30,737	41,811	19,002	-	1,250	99,851	380,975
1984	7,564	48,791	34,781	20,719	-	77	111,932	411,039
1985	8,060	33,467	35,571	24,474	-	-	101,572	358,994
1986	8,503	32,529	38,788	27,822	-	15,873	123,515	420,162
1987	8,946	33,733	44,658	29,064	-	95,994	212,395	695,387
1988	9,392	33,704	39,276	32,024	2,154	30,395	146,945	463,043
1989	9,846	34,245	56,576	36,301	3,763	50,948	191,679	581,334
1990	10,411	33,951	31,445	38,438	3,385	110,678	228,308	666,433

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
Littlerock Creek Irrigation District

(in dollars except where otherwise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total fixed Payments (Nominal)	RAFTELIS CALCULATED: Total fixed Payments in 2018 $
	Capital Costs (Table D)							
	Annual Payment of Principal	Annual Interest Payment	Minimum OMP&R Component (Table E & G)					
1991	10,942	33,591	46,035	40,793	5,236	65,111	201,708	566,687
1992	11,535	32,403	51,225	46,610	7,053	22,891	171,717	464,320
1993	12,141	30,180	48,657	46,720	7,437	60,615	205,750	535,462
1994	12,784	29,831	53,958	44,772	7,431	88,549	237,325	594,452
1995	13,436	30,107	51,919	47,914	8,769	43,892	196,037	472,602
1996	14,123	28,753	59,930	47,104	10,640	31,691	192,241	446,055
1997	14,821	29,517	64,464	52,082	10,972	24,319	196,175	438,097
1998	15,579	29,173	58,055	52,433	10,550	30,365	196,155	421,609
1999	16,340	28,928	81,350	54,224	14,475	18,305	213,622	441,918
2000	17,148	27,846	79,374	55,078	16,486	-	195,932	390,108
2001	17,970	27,200	67,726	55,090	16,224	-	184,210	353,002
2002	18,837	26,960	69,689	55,912	16,724	-	188,122	346,967
2003	19,745	25,148	114,340	54,735	17,415	-	231,383	410,738
2004	20,674	24,263	41,999	54,215	17,432	-	158,583	270,941
2005	21,648	23,526	37,282	56,310	16,457	-	155,223	255,246
2006	22,711	22,435	75,875	57,053	17,809	-	195,883	310,015
2007	23,854	21,500	81,033	62,714	11,413	-	200,514	305,433
2008	25,037	20,813	106,363	64,151	17,175	1,845	235,384	345,090
2009	26,245	20,274	57,372	70,109	18,529	3,269	195,798	276,279
2010	27,659	18,849	107,466	87,605	17,731	177	259,487	352,403
2011	29,173	18,001	68,537	96,432	19,149	407	231,699	302,854
2012	30,653	17,291	72,780	100,679	18,453	495	240,351	302,370
2013	32,195	15,825	116,198	106,557	20,052	3,270	294,097	356,097
2014	32,939	14,645	89,881	101,120	21,838	3,804	264,227	307,921
2015	33,975	13,707	161,605	137,621	20,924	2,214	370,046	415,052
2016	34,483	13,912	114,771	164,497	20,895	746	349,304	377,081
2017	33,301	13,387	92,259	158,416	19,257	658	317,278	329,652

APPENDIX C: SWP FIXED COSTS – PWD

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
PALMDALE WATER DISTRICT

(In dollars except w here otherw ise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total Fixed Payments (Nominal)	RAFTELIS CALCULATED: Total Fixed Payments In 2018 $
	Capital Costs (Table D)							
	Annual Payment of Principal	Annual Interest Payment	Minimum OMP&R Component (Table E & G)					
1960	-	-	-	-	-	-	-	-
1961	-	-	-	-	-	-	-	-
1962	-	-	-	-	-	-	-	-
1963	-	-	-	-	-	-	-	-
1964	946	8,222	-	-	-	-	9,168	72,363
1965	1,796	10,440	-	-	-	-	12,236	92,953
1966	3,323	24,593	-	-	-	-	27,916	204,109
1967	6,497	34,366	-	-	-	-	40,863	287,556
1968	10,751	73,446	14,340	-	-	-	98,537	667,385
1969	16,145	110,471	11,056	-	-	-	137,672	897,444
1970	22,300	153,990	16,970	-	-	-	193,260	1,212,518
1971	27,937	147,486	23,402	-	-	-	198,825	1,200,609
1972	31,440	193,968	52,963	13,021	-	-	291,392	1,693,530
1973	33,743	220,289	67,837	26,131	-	-	348,000	1,946,610
1974	35,597	233,427	16,970	39,631	-	-	325,625	1,753,080
1975	37,618	202,360	77,908	50,989	-	-	368,875	1,911,383
1976	39,567	199,484	49,562	67,591	-	-	356,204	1,776,445
1977	41,584	197,159	80,370	77,255	-	-	396,368	1,902,550
1978	43,662	201,374	90,048	98,345	-	-	433,429	2,002,349
1979	45,910	198,167	90,841	117,285	-	-	452,203	2,010,665
1980	48,293	197,299	126,792	138,590	-	-	510,974	2,186,702
1981	52,024	303,742	94,787	211,396	-	-	661,949	2,726,464
1982	54,285	122,914	188,716	235,100	-	-	601,015	2,382,566
1983	59,032	214,456	310,207	163,925	-	-	747,620	2,852,496
1984	63,894	346,012	258,244	174,500	-	-	842,650	3,094,396
1985	68,768	233,039	259,837	200,605	-	157,601	919,850	3,251,098
1986	73,550	225,068	284,701	223,785	-	301,486	1,108,590	3,771,104
1987	78,491	229,358	328,728	228,654	-	258,719	1,123,950	3,679,840
1988	83,316	229,980	270,456	248,146	16,240	126,639	974,777	3,071,650
1989	87,966	231,677	424,450	276,155	27,981	493,424	1,541,653	4,675,602
1990	93,341	228,640	227,818	289,119	24,956	545,342	1,409,216	4,113,513

Tables A, C, D, E, F, and G
of the
Water Supply Contract
between
The State of California
Department of Water Resources
PALMDALE WATER DISTRICT

(in dollars except where otherwise noted)

Calendar Year	Transportation Charge			Delta Water Charges	Water System Revenue Bond Surcharge	Off-Aquaduct Power Facilities	RAFTELIS CALCULATED: Total Fixed Payments (Nominal)	RAFTELIS CALCULATED: Total Fixed Payments in 2018 $
	Capital Costs (Table D)							
	Annual Payment of Principal	Annual Interest Payment	Minimum OMP&R Component (Table E & G)					
1991	97,336	226,192	340,042	306,835	38,641	488,207	1,497,253	4,206,443
1992	101,682	220,395	380,756	350,587	52,160	367,996	1,473,576	3,984,527
1993	106,683	204,334	353,768	351,415	55,045	640,919	1,712,164	4,455,886
1994	112,034	200,467	390,690	336,766	54,968	678,876	1,773,801	4,443,018
1995	117,527	201,835	404,431	360,394	64,852	636,541	1,785,580	4,304,641
1996	123,261	191,420	442,831	354,307	78,696	723,670	1,914,185	4,441,462
1997	129,259	195,880	478,826	391,745	81,146	648,652	1,925,508	4,300,033
1998	135,477	192,722	447,693	394,387	78,028	657,806	1,906,113	4,096,940
1999	141,897	190,165	607,048	407,859	107,060	710,674	2,164,703	4,478,099
2000	148,667	363,992	685,260	510,073	121,898	257,146	2,087,036	4,155,371
2001	155,717	231,130	595,727	510,185	135,581	445,872	2,074,212	3,974,820
2002	163,127	225,450	617,420	517,791	139,071	529,674	2,192,533	4,043,849
2003	170,744	213,868	961,287	506,894	144,812	277,984	2,275,589	4,039,495
2004	178,712	206,574	374,148	502,073	144,960	368,929	1,775,396	3,033,283
2005	187,084	200,581	367,640	521,475	136,853	400,828	1,814,461	2,983,663
2006	196,108	191,376	666,040	528,361	148,089	442,278	2,172,252	3,437,928
2007	205,998	183,285	707,653	580,783	95,550	710,515	2,483,784	3,783,423
2008	216,175	177,549	925,863	594,096	144,009	1,052,126	3,109,818	4,559,219
2009	226,411	173,072	517,546	649,264	154,087	1,154,433	2,874,813	4,056,482
2010	238,646	160,990	889,664	811,293	147,438	810,142	3,058,173	4,153,234
2011	251,751	154,104	642,842	893,038	159,239	551,068	2,652,042	3,466,484
2012	264,471	148,214	624,548	932,373	154,732	1,072,349	3,196,687	4,021,549
2013	277,541	135,890	1,030,792	986,811	168,130	512,798	3,111,962	3,768,010
2014	283,992	125,755	771,792	936,466	183,142	348,413	2,649,560	3,087,706
2015	292,536	117,899	1,383,482	1,274,493	175,577	131,952	3,375,939	3,786,529
2016	297,194	120,323	1,025,625	1,523,381	175,457	29,017	3,170,997	3,423,158
2017	288,693	114,988	786,871	1,467,071	161,746	21,152	2,840,521	2,951,301

Exhibit 10

Antelope Valley Watermaster
P.O. Box 3025
Quartz Hill, CA 93586
(661) 234-8233
www.avwatermaster.net

BILL TO
Phelan Pinon Hills CSD
4176 Warbler Rd.
Phelan, CA 92371

INVOICE 1650CY20-1

DATE 05/20/2020

DUE DATE 06/19/2020

DELINQUENT BALANCE
$1,191,063.34

CLASS	ACCOUNT SUMMARY	AMOUNT
07/15/2019	Balance Forward	$1,191,063.34
	Other payments and credits after 07/15/2019 through 05/19/2020	0.00
05/20/2020	Other invoices from this date	0.00
	New charges (details below)	3,011.48
	Total Amount Due	$1,194,074.82

TYPE	DESCRIPTION	ACRE FT.	RATE	AMOUNT
Variable	Actual production in excess of Production Right per Annual Production Report for 2019	3.16	5.00	15.80
RWA	2019 Replacement Water Assessment outside Adjudicated Boundaries	3.16	948.00	2,995.68

Please include invoice number on check payment.

PLEASE NOTE:
Delinquent balances are assessed a 10% late fee

TOTAL OF NEW CHARGES 3,011.48

TOTAL DUE $1,194,074.82

Per Resolution No. R-19-33 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held January 22, 2020, in Palmdale, California

and

Judicial Council Coordination Proceeding No. 4408 Santa Clara Case No.: 1-05-CV-049053

PLEASE REMIT PAYMENT TO:
Antelope Valley Watermaster
P.O. Box 3025
Quartz Hill, CA 93586

PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT
PO BOX 294049
PHELAN, CA 92329-4049
(760) 868-1212

DESERT COMMUNITY BANK
90-3770/1222

031298

31298

DATE	CHECK DATE	PAY THIS AMOUNT
	03/17/2021	$3,011.48

PAY **---Three Thousand Eleven Dollars and 48/100 Cents---**

TO THE ORDER OF
Antelope Valley Watermaster
P.O. Box 3025
Quartz Hills, CA 93586-

Void after 180 days
Two Signatures Required

Don Bartz MP

Charles N. Johnson MP

AUTHORIZED SIGNATURE

Security features. Details on back.

⑈031298⑈ ⑆122237706⑆ 1296167888⑈

PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT

031298

VENDOR NAME: Antelope Valley Watermaster VENDOR #: ANT VAL CHECK #: 31298 CHECK DATE: 03/17/2021

DATE	INVOICE #	P.O. #	DESCRIPTION	AMOUNT
	GL #		ACCOUNT NAME	PROJECT ACCOUNT KEY
2/28/2021	1650CY20-1		2019 Annual Production Report	3,011.48
	01-1-3-50030		MWA/AVW Replacement Water	

CHECK TOTAL 3,011.48

Exhibit 11

RESOLUTION NO. R-20-08

ADOPTING REPLACEMENT WATER ASSESSMENTS FOR YEAR 2020 FOR ANTELOPE VALLEY STATE WATER CONTRACTORS ASSOCIATION

WHEREAS, the Antelope Valley Watermaster, formed by the Antelope Valley Groundwater Cases Final Judgment ("Judgment"), Santa Clara Case No. 1-05-CV-049053 signed December 23, 2015, is to administer the Judgment; and

WHEREAS, the Judgment provides that the Watermaster shall calculate, assess and collect Replacement Water Assessments pursuant to Section 9.2 of the Judgment; and

WHEREAS, the Watermaster has taken and considered public comment on the issue and has calculated that a Replacement Water Assessment of $486 an acre foot for Producers within the Antelope Valley State Water Contractors Association ("AVSWCA") boundaries in Year 2020, and a Replacement Water Assessment of $989 an acre foot for Producers outside the AVSWCA boundaries for Year 2020, which are reflective of the proportional share of State Water Project fixed costs applicable to those Producers outside the AVSWCA boundaries, are consistent with the terms of the Judgment and are based on the actual cost of Replacement Water, including Watermaster spreading costs; and

WHEREAS, these Producers will also be responsible for applicable Administrative Assessments in addition to a Replacement Water Assessment.

NOW, THEREFORE, BE IT RESOLVED, that the Watermaster Board unanimously adopts a Replacement Water Assessment for Year 2020 in the amount of $486 an acre foot for Producers within the AVSWCA boundaries, and a Replacement Water Assessment in the amount of $989 an acre foot in 2020, for Producers outside the AVSWCA boundaries.

I certify that this is a true copy of Resolution No. R-20-08 as passed by the Board of Directors of the Antelope Valley Watermaster at its meeting held February 26, 2020, in Palmdale, California.

Date: 2/26/20

2-26-2020

Dennis Atkinson, Vice-Chairman

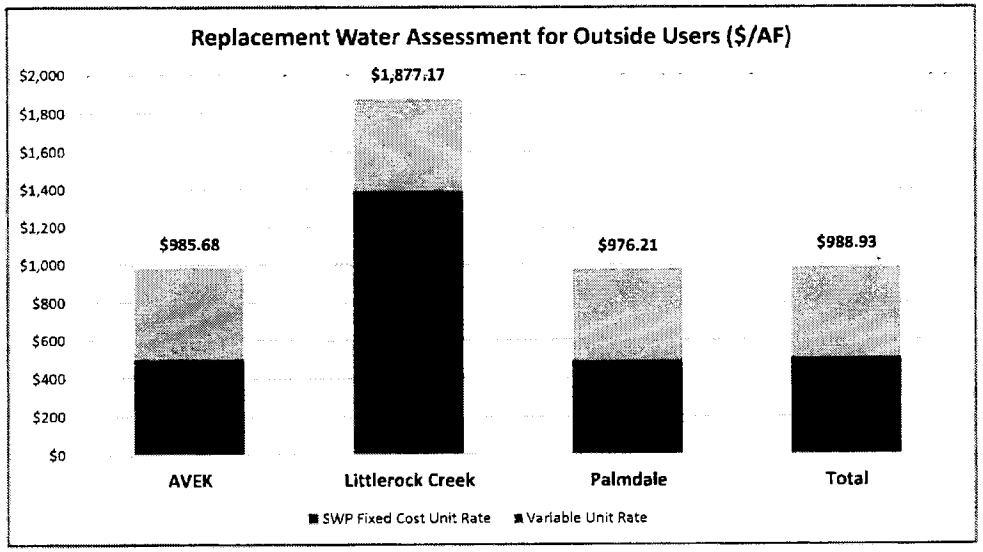
ATTEST: Patricia Rose

Patricia Rose – Secretary

Antelope Valley Replacement Water Assessment Model - Dashboard

Key Variables		Notes
Allocation		
Annual Cost Escalation	3.8%	Average CPI from 2019 to 1962
Assumed Water Loss (for Variable Rate)	10%	
Untreated Water Availability Charge	$437 / AF	2020 Rate for agricultural water delivered under terms of water service agreements through AVEK-owned facilities.

Key Results	AVEK	Littlerock Creek	Palmdale	Total
Present Value of Total SWP Fixed Payments	$1,151,017,498	$18,522,385	$166,796,446	$1,336,336,330
Total Deliveries/AF	2,301,473	13,310	339,947	2,654,730
SWP Fixed payment /AF Deliveries	$500.12 / AF	$1,391.61 / AF	$490.65 / AF	$503.38 / AF
SWP Fixed Cost Unit Rate	$500.12 / AF	$1,391.61 / AF	$490.65 / AF	$503.38 / AF
Variable Unit Rate	$485.56 / AF	$485.56 / AF	$485.56 / AF	$485.56 / AF
Replacement Water Assessment for Outside Use	**$985.68 / AF**	**$1,877.17 / AF**	**$976.21 / AF**	**$988.93 / AF**



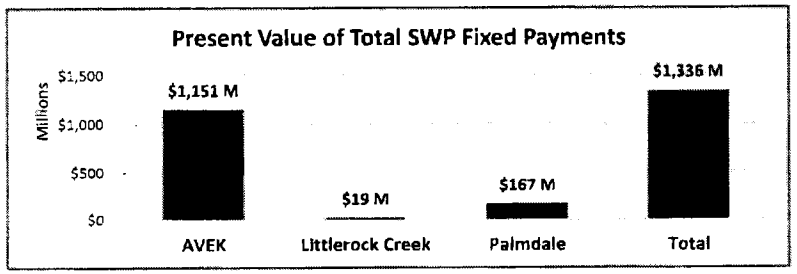


Exhibit 12

Antelope Valley Watermaster
5022 West Avenue N, Suite 102 #158
Palmdale, CA 93551
(661) 234-8233
www.avwatermaster.net

ANTELOPE VALLEY WATERMASTER
EST. 2016

BILL TO
Phelan Pinon Hills CSD
4176 Warbler Rd.
Phelan, CA 92371

INVOICE 1675CY21-10

DATE 05/20/2021

DUE DATE 07/01/2021

DELINQUENT BALANCE
$1,191,063.34

CLASS	ACCOUNT SUMMARY	AMOUNT
05/20/2020	Balance Forward	1,194,074.82
	Other payments and credits after 05/20/2020 through 05/19/2021	-3,011.48
05/20/2021	Other invoices from this date	0.00
	New charges (details below)	284,766.37
	Total Amount Due	1,475,829.71

TYPE	DESCRIPTION	ACRE FT.	RATE	AMOUNT
LATE FEE	10% of Delinquent Balance	1,191,063.34	0.10	119,106.33
Variable	Actual production in excess of Production Right per Annual Production Report for 2020	166.66	5.00	833.30
RWA	2020 Replacement Water Assessment outside Adjudicated Boundaries	166.66	989.00	164,826.74

Please include invoice number on check payment. Delinquent balances will be assessed a 10% late fee.

TOTAL OF NEW CHARGES	284,766.37
TOTAL DUE	**$1,475,829.71**

Per Resolution No. R-19-33 and Resolution No. R-20-08 as passed by the Board of Directors of the Antelope Valley Watermaster at its meetings held December 18, 2019 and February 26, 2020, in Palmdale, California.

and

Judicial Council Coordination Proceeding No. 4408 Santa Clara Case No.: 1-05-CV-049053

PLEASE REMIT PAYMENT TO:
Antelope Valley Watermaster
P.O. Box 3025
Quartz Hill, CA 93586

Exhibit 13

PHELAN COMMUNITY SERVICES DISTRICT DELINQUENCY SUMMARY

YEAR	RWA INVOICE DATE	RWA INVOICE AMOUNT	10% PENALTY	Interest at 1.5%/Mo. 11/1/2020 TO 7/21/2021	Total Accrued Interest as of 7/21/2021	Daily Interest at 1.5%/Mo
2016	9/26/2019	$ 684,319.44	$ 68,431.94			
2017		$ 345,121.28	$ 34,512.13			
2018		$ 161,622.62	$ 16,162.26			
	subtotal	$ 1,191,063.34	$ 119,106.33	$ 156,029.30		$ 595.53
2019	5/20/2020	n/a (paid)	$ 299.57			
2020	5/20/2021	$ 164,826.74	n/a (not delinquent)			
	TOTAL	$ 1,355,890.08	$ 119,405.90	$ 156,029.30	$ 275,435.20	
Attorney Fees and Costs		$ 84,644.47				
Total Interest		$ 275,435.20				
GRAND TOTAL		$ 1,715,969.75				

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 June 23, 2021, I served the foregoing document described as **ANTELOPE VALLEY WATERMASTER'S MOTION FOR MONETARY, DECLARATORY AND INJUNCTIVE RELIEF AGAINST PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT; DECLARATIONS OF CRAIG A. PARTON AND PATRICIA ROSE; EXHIBITS 1-13** 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.scefiling.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 June 23, 2021, at Santa Barbara, California.

Signature
Elizabeth Wright