Eric L. Garner, Bar No. 130665
Jeffrey V. Dunn, Bar No. 131926
Wendy Y. Wang, Bar No. 228923
BEST BEST & KRIEGER LLP
18101 Von Karman Avenue, Suite 1000
Irvine, California 92612
Telephone: (949) 263-2600
Attorneys for Cross-Complainant:
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

Mary Wickham, Bar No. 145664
County Counsel
Warren Wellen, Bar No. 139152
Principal Deputy County Counsel
OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 974-8407
Facsimile: (213) 687-7337
Attorneys for Cross-Complainant:
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

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BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;
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, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668
Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC364533
Richard Wood v. Los Angeles County Waterworks District No. 40, et al., Superior Court of California, County of Los Angeles, Case No. BC391869

Judicial Council Coordination Proceeding No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

WATER SUPPLIERS' OPPOSITION TO PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S MOTION FOR DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND WATERMASTER RESOLUTION NO. R-18-04 RE REPLACEMENT WATER ASSESSMENTS FOR 2016 AND 2017; DECLARATION OF WENDY Y. WANG

Hearing: April 18, 2018
Time: 9:00 a.m.
Dept.: Room 222 (Stanley Mosk)

MURPHY & EVERTZ LLP
Douglas J. Evertz, Bar No. 123066
650 Town Center Drive, Suite 550
Costa Mesa, CA 92626
(714) 277-1700; (714) 277-1777 fax
Attorneys for City of Lancaster and Rosamond Community Services District

OLIVAREZ MADRUGA LEMIEUX O'NEILL LLP
W. Keith Lemieux, Bar No. 161850
4165 E. Thousand Oaks Blvd., Ste. 350
Westlake Village, CA 91362
(805) 495-4770; (805) 495-2787 fax
Attorneys for 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

LAGERLOF SENECAL GOSNEY & KRUSE
Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
(626) 793-9400; (626) 793-5900 fax
Attorneys for Palmdale Water District

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BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

After considering evidence concerning Phelan Piñon Hills Community Services District's ("Phelan") pumping and the resulting harm to the Antelope Valley Adjudication Area ("Adjudication Area" or "Basin"), this Court concluded that Phelan "has no right to pump groundwater from the Basin except under terms of the Court-approved Physical Solution." (Declaration of Wendy Wang ("Wang Decl."), Ex. "B" at 10:9-10.) As an exporter of water, Phelan has no right to pump groundwater in the Adjudication Area. (*Id.* at 9:7-8.) Nonetheless, the Physical Solution carves out a narrow exception allowing Phelan to pump and export water from the Adjudication Area provided that: (1) its pumping does not cause "Material Injury"[1]; and (2) Phelan pays replacement assessments and all other costs necessary to protect other parties' production rights. (Motion, Ex. 3 [Physical Solution], §6.4.1.2.) Phelan's motion now seeks to remove these clear and unequivocal conditions for its exportation of water in 2016 and 2017.

For the reasons stated herein, the Los Angeles County Waterworks District No. 40 ("District No. 40"), Palmdale Water District, Rosamond Community Services District, Quartz Hill Water District, Littlerock Creek Irrigation District, and Palm Ranch Irrigation District ("Water Suppliers") oppose Phelan's motion.

I. PHELAN'S EXPORTATION OF GROUNDWATER HARMS THE BASIN

Phelan does not pump any groundwater for use within the Adjudication Area. All of the water pumped by Phelan is exported from the Basin.[2] Uncontroverted evidence introduced by Phelan during the 2014 trial on its water rights demonstrates "that Phelan's pumping of groundwater from Basin negatively impacts the Butte sub-basin. . . [, and] deprives the Basin of natural recharge that would otherwise flow into the Basin by taking water from the Adjudication Area for use within the Mojave Adjudication Area." (Wang Decl., Ex. "B" at 9:22-3.) The Court found that because the Butte sub-basin (where Phelan's Well 14 is located) recharges the

[1] Capitalized terms not otherwise defined herein shall have the same meaning as provided in the court-adopted Physical Solution.

[2] "Phelan's service area falls entirely within San Bernardino County and outside the Adjudication Area. Phelan has one well within the Adjudication Area and several wells outside the Adjudication Area. Phelan uses that well water to provide public water supply to Phelan customers outside the Adjudication Area and within the adjacent Mojave Adjudication Area." (Wang Decl., Ex. "B" at 9:9-21.)

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IRVINE, CALIFORNIA 92612

Lancaster sub-basin (which lies within the Adjudication Area), Phelan's pumping could lower groundwater level in the Adjudication Area. (Wang Decl., Ex. "A" at 10:21-23.) Moreover, Phelan's "operation of its three groundwater wells located near Well 14 [but outside of the Adjudication Area] intercepts groundwater that would otherwise flow into and recharge the Adjudication Area." (*Id.* at 10:23-25.)

Based on evidence introduced by Phelan's own expert, Mr. Tom Harder, it is inarguable that Phelan's pumping harms the Basin and that any pumping of water by Phelan that is not mitigated via replacement water funded by a replacement water assessment will harm the Basin.

II. SECTION 6.4 OF THE PHYSICAL SOLUTION PROVIDES THE ONLY MECHANISM UNDER WHICH PHELAN CAN PUMP GROUNDWATER FROM THE BASIN

Section 6.4 of the Physical Solution enjoins "each and every Party" from transporting Groundwater from the Basin to areas outside the Basin. However, Section 6.4.1.2 creates a very limited exception to the injunction for Phelan. Section 6.4.1.2 provides that the injunction does not apply to "any Groundwater Produced within the Basin by [Phelan] and delivered to its service areas, so long as the total Production does not exceed 1,200 acre feet per Year, such water is available for Production without causing Material Injury, and the District pays a Replacement Water Assessment pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect Production Rights decreed herein . . . ."

This narrow exception is the only mechanism under the Physical Solution that allows Phelan to pump any groundwater. By carving out this exception, the Court expressly required Phelan to pay a Replacement Water Assessment. Because the specific language providing the only exception for Phelan to pump groundwater mandates that Phelan pay a Replacement Water Assessment to pump that water, Phelan cannot now evade the Replacement Water Assessment.

III. PHELAN HAS NO LEGALLY COGNIZABLE WATER RIGHT TO PUMP WATER FROM THE BASIN AND THE PHYSICAL SOLUTION'S DEFINITION OF "PRODUCER" DOES NOT CREATE SUCH RIGHT

As set forth in the Statement of Decision, "Phelan has no appropriative right or any other

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LOS ANGELES, CALIFORNIA 90071

right to Basin groundwater." (Wang Decl., Ex. "B" at 9:7-8.) Despite this, Phelan now relies on Section 3.5.30 of the Physical Solution to claim that it has a right to pump and export groundwater for free during the first two years of the Rampdown Period. Section 3.5.30 defines "Producer" as a "Party who Produces Groundwater." The term "Produce" is defined as: "To pump Groundwater for existing and future reasonable beneficial uses." (Physical Solution, §3.5.29.) The purpose of the Rampdown Period and the Rampdown provision is to allow a Party to gradually reduce its pumping "from its Pre-Rampdown Production to its Production Right." (Physical Solution, §8.3 [emphasis added].) "Production Right" is the "amount of Native Safe Yield that may be Produced each Year free of any Replacement Water Assessment and Replacement Obligation. The total of the Production Rights decreed in this Judgment equals the Native Safe Yield." (*Id.*, §3.5.32.)

Implicit in the definitions of "Produce" and "Producer" and the Rampdown provision is that to "Produce" groundwater during the Rampdown Period a party must have a water right. This Court has already determined that Phelan does not have a water right. In fact, in direct response to Phelan's request for "a court-adjudicated right to pump groundwater from the Basin for use outside of the Adjudication Area," the Court specifically found that Phelan did not have any such right. (Wang Decl., Ex. "B" at 9:5-8.) As such, Phelan is not and cannot be a "Producer" under Sections 3.5.30 and 8 of the Physical Solution.

If the Court were to adopt Phelan's interpretation of Sections 3.5.30 and 8 and include within the definition of "Producers" parties without a present water right, there would be nothing to prevent the tens of thousands of parties in this action who have never pumped groundwater from the Basin from drilling a well and pumping Groundwater free of a Replacement Water Assessment for two years. To adopt Phelan's interpretation would create pumping rights where none exists.

Pursuant to the Physical Solution, any Production that is "not of right" as of the entry of the Judgment is a "New Production" that must comply with Section 18.5.13 of the Physical Solution, which requires a new application to be submitted to the Watermaster. As the Physical Solution does not provide Phelan a Production Right (rather it merely exempts Phelan from the

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300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

injunction against exportation under limited circumstances), Phelan is not and cannot be a "Producer" for the purposes of the Rampdown provision.

IV. CONCLUSION

For the foregoing reasons, Phelan's motion should be denied.

Dated: April 5, 2018

BEST BEST & KRIEGER LLP

By: Wendy Y. Wang
ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

Dated: April 5, 2018

OLIVAREZ MADRUGA LEMIEUX O'NEILL LLP

By: /s/ *Keith Lemieux*
W. KEITH LEMIEUX
Attorneys for 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

Dated: April 5, 2018

MURPHY & EVERTZ LLP

By: /s/ *Douglas J. Evertz*
DOUGLAS J. EVERTZ
Attorneys for CITY OF LANCASTER AND ROSAMOND COMMUNITY SERVICES DISTRICT

LAW OFFICES OF
BEST BEST & KRIEGER LLP
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

Dated: April 5, 2018

LAGERLOF SENECAL GOSNEY & KRUSE

By: /s/ *Thomas Bunn III*
THOMAS BUNN III
Attorneys for PALMDALE WATER DISTRICT

LAW OFFICES OF
BEST BEST & KRIEGER LLP
300 SOUTH GRAND AVENUE, 25TH FLOOR
LOS ANGELES, CALIFORNIA 90071

DECLARATION OF WENDY Y. WANG

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am one of the attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. Attached hereto as Exhibit "A" is a true and correct copy of the Partial Statement of Decision for Trial Related to Phelan Piñon Hills Community Services District (2nd and 6th Causes of Action), dated February 3, 2015, and issued after the November 4, 2014 trial on Phelan's causes of action.

4. Attached hereto as Exhibit "B" is a true and correct copy of the Statement of Decision, dated December 23, 2015, and issued after the Phase 6 trial.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of April, 2018 at Los Angeles, CA.

Wendy Y. Wang

LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

EXHIBIT A

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

PARTIAL STATEMENT OF DECISION FOR TRIAL RELATED TO PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT (2ND AND 6TH CAUSES OF ACTION)

Trial: November 4, 2014

Judge: Honorable Jack Komar, Ret.

Cross-Complainant Phelan Piñon Hills Community Services District's ("Phelan Piñon Hills") second and sixth causes of action for a declaration of its appropriative and return flow rights, respectively, came on regularly for trial before this court commencing on November 4, 2014, in Department 56 of the Los Angeles County Superior Court, the Honorable Jack Komar presiding. During trial, Phelan Piñon Hills presented percipient and expert witnesses, documentary evidence, and a Stipulation of agreed upon facts.

After Phelan Piñon Hills completed its presentation of evidence, the following Cross-Defendants jointly moved for judgment pursuant to section 631.8 of the Code of Civil Procedure: Los Angeles County Waterworks District No. 40, Palmdale Water District, 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, and Big Rock Mutual Water Company, the State of California, the City of Los Angeles, Tejon Ranchcorp, Tejon Ranch Company, and Granite Construction Company (collectively, "Phelan Cross-Defendants").

The court, having considered the evidence and arguments of counsel, orally issued its tentative decision granting the motion for judgment on November 5, 2014 in favor of the Phelan Cross-Defendants. For the reasons described in further detail below, the Court now issues its Statement of Decision and finds that the cross defendants are entitled to judgment in their favor on the Phelan Piñon Hills' second and sixth cause of action.

Phelan Piñon Hills has filed its written request for findings of fact and conclusions of law on numerous issues. Only those issues that are determinative of the outcome of this proceeding are addressed in this Statement of Decision.

The standard for a statement of decision as set forth in Code of Civil Procedure section 632 requires a court to explain" ... the legal and factual basis for its decision as to each of the principal contraverted issues at trial. ... "Case law is clear that a court must provide the factual and legal basis for the decision on those issues only closely related to the ultimate issues on the case. (See *People v. CasaBlanca Convalescent Homes* (1984) 159 Cal. App. 3d 509, 523-524.) It

is also clear that a court need not respond to requests that are in the nature of "interrogatories." (See *id.* at pp. 525-526.)

The principal issues at this phase of the trial were to determine if the Phelan Piñon Hills Community Service Area was entitled to an appropriator's right to produce water from a well located in the Antelope Valley Ground Water Adjudication Area (Second Cause of Action of its Cross Complaint) and whether it had a right to return flows created by the return of water from its use in areas outside the adjudication area but within the aquifer boundaries (6th Cause of Action).

In order to establish a right to the reasonable and beneficial production of water from an aquifer in an adjudication area, the claimant must establish rights defined as either overlying rights, appropriative rights from surplus water, or prescriptive rights. If the aquifer is in a state of overdraft and there is no surplus because annual recharge is less than extraction, an overlying owner is entitled only to a *correlative* right to produce water for reasonable and beneficial uses on the owner's property, subject to all other correlative rights. Such a party cannot pump more than the reasonable and beneficial amount needed for the owned land from which the water is pumped and would be a wrongful appropriator for any excess amounts or exported water and would be subject to injunctive or other relief.

The boundaries of the Antelope Valley Adjudication Area (the Adjudication Area) consist of an area overlying and coextensive with the aquifer which were determined by the court in the Phase One trial in these coordinated proceedings. A small area which overlies the aquifer in the south east corner was excluded from the Adjudication Area because it is within the Mojave Adjudication Area and under the jurisdiction of the Mojave County Superior Court Ground Water adjudication, although as the evidence later established, disconnected from the Mojave Aquifer.

In the Second Phase of trial in these coordinated proceedings, the Antelope Valley Adjudication area was found to contain a single aquifer and while there are variations in water level within the various subareas (sub basins), there is hydraulic connectivity and conductivity with all parts of the several sub basins within the adjudication area aquifer.

In the Third Phase of Trial in these coordinated proceedings, the court found that the entire aquifer was in a state of over draft since prior to 2005 [1] and suffering degradation and detriment of a permanent nature as a result of extractions exceeding annual recharge over many years both preceding and after 2005.

Phelan filed its Cross Complaint in these proceedings and sought relief in Eight Causes of Action. The Second Cause of Action sought to establish "an appropriative right for public use to pump groundwater from the Adjudication area" from Well # 14 to its service area which is outside the adjudication area.

Phelan Piñon Hills Community Services District (Phelan) owns Well # 14 which it acquired and from which it began producing water in 2005. The well is located in the Antelope Valley Adjudication Area but none of the water produced is directly used within the Antelope Valley Ground Water Adjudication area. The water is pumped to and used in the Phelan Service area for use by residents in the service area, .an area outside the Adjudication area.

1. GENERAL FINDINGS OF FACT

The Court finds that the following facts were established by the evidence, including testimony of witnesses, documentary evidence, and the parties' stipulation of facts, as follows below.

Phelan Piñon Hills is a California community services district. It was formed on March 18, 2008. It provides public water service within its service area which is entirely within San Bernardino County.

As part of its formation, Phelan Piñon Hills acquired a parcel of land within Los Angeles County ("Well 14 Parcel"). The Well 14 Parcel is not within the Phelan Piñon Hills service area.

The Well 14 Parcel has an operating groundwater well, which is commonly referred to as

[1] The evidence at the Third Phase of Trial established that the Antelope Valley Basin was in a state of overdraft from 1951 through 2005.

Phelan Piñon Hills' "Well 14." Well 14 Parcel is within the Antelope Valley Adjudication Area ("Adjudication Area") as determined by this Court's order, dated March 12, 2007

A part of Phelan Piñon Hills' service area overlies a portion of the Antelope Valley Groundwater Basin as described and shown in California Department of Water Resources Bulletin 118 (2003). That portion of the Phelan Piñon Hills' service area is within the existing Mojave Basin Adjudication Area in San Bernardino County. It is outside of the Antelope Valley Adjudication Area. Although the south-eastern boundary of the Antelope Valley Adjudication Area is the county line between San Bernardino and Los Angeles Counties, the portion of the Antelope Valley Groundwater Basin located in San Bernardino County is hydrologically connected to the Antelope Valley Adjudication Area in Los Angeles County.

2. SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Prior to Phelan Piñon Hills' formation a community services district, a predecessor agency had installed Well 14 on the Well 14 Parcel in 2004. Well 14's groundwater production is as follows:

2004 and earlier: none;

2005 (beginning in September): 1.11 acre feet ("af");

2006: 164.15 af;

2007: 20.95 af;

2008: 493.27 af;

2009: 558.65 af;

2010: 1,110.45 af;

2011: 1,053.14 af;

2012: 1,035.26 af; and

2013: 1,028 af.

Phelan Piñon Hills pumps groundwater for municipal uses from a number of wells including Well 14. Well 14 is the only Phelan Piñon Hills well outside the Phelan Piñon Hills service area.

Phelan Piñon Hills does not import water from the State Water Project or from any other source. But Phelan Piñon Hills claims a right to "return flows" from Well 14. Phelan Piñon Hills contends that some amount of the groundwater produced from Well 14 is used by Phelan Piñon Hills customers outside the Adjudication Area, recharges the Adjudication Area. Phelan Piñon characterizes the recharge as "return flows." The Phelan Piñon Hills' groundwater production from Well 14 during the years from 2010 to 2013 exceeds the average amount of the Phelan Piñon Hills claimed "return flows" during that same period.

Well 14 is located in an area of the Adjudication Area generally known as the Butte subbasin, which borders the Lancaster subbasin to the west. The Butte sub basin and the Lancaster sub basin physically adjacent and are hydrologically connected. Groundwater pumping in a sub basin can lower the groundwater level in an adjacent sub basin.

Phelan Piñon Hills operates three groundwater wells in San Bernardino County that are within one mile of Well 14. These three wells are located within the Antelope Valley Groundwater Basin, but outside of the Adjudication Area. These three wells intercept groundwater that would otherwise flow into and recharge the Adjudication Area.

A. <u>Phelan Piñon Hills' Second Cause of Action for a Declaration of Its Appropriative Rights</u>

The Court finds and determines that the Phelan Piñon Hills does not have water rights to pump groundwater and export it from the Adjudication Area to an area for use other than on its property where Well 14 is located within the adjudication area. All of its pumping from the inception from Well 14 is used on other than the property from which it is pumped. While it is entitled to use the water from Well 14 on its land within the adjudication area, so long as there is no surplus within the Adjudication Area aquifer, it is an appropriator without a right to pump. There was no credible testimony or evidence to the contrary.

1. *The factual and legal basis for the Court's decision is as follows:*

Under California law, "[a]ny 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" so long as the basin is not in overdraft. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241 ("*Mojave Water Agency*") [citing *California Water Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 725-726].) While Phelan Piñon Hills owns land in the Adjudication Area, it does not use the water it pumps from Well 14 on its land within the Adjudication Area. Instead, Phelan Piñon Hills provides such water to its customers outside of the Adjudication Area and not on its own property.

To establish an appropriative right, Phelan Piñon Hills bears the burden of proof to establish that the water it pumped from the Antelope Valley Adjudication Area is ***surplus*** water, that the aquifer from which it is pumped is not in overdraft, and that its use is reasonable and beneficial. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1241 ("*Mojave Water Agency*"); *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926 ("*Pasadena*"); *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278, 293 ("San Fernando"); *Allen v. California Water & Tel. Co.* (1946) 29 Cal.2d 466, 481; *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 279 ("*Santa Maria*").)

The California Supreme Court has explained the concepts of surplus water and overdraft in a groundwater basin:

> A ground basin is in a state of surplus when the amount of water being extracted from it is less than the maximum that could be withdrawn without adverse effects on the basin's long term supply. While this state of surplus exists, none of the extractions from the basin for beneficial use constitutes such an invasion of any water right as will entitle the owner of the right to injunctive, as distinct from declaratory, relief. (*City of Pasadena v. City of Alhambra, supra*, 33 Cal.2d at pp. 926-927; *City of Los Angeles v. City of Glendale, supra*, 23 Cal.2d at p. 79.) 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.**

(*San Fernando, supra,* 14 Cal.3d at pp. 277-78 [emphasis added].)

This Court has already determined, after considering extensive oral and documentary evidence and hearing arguments, that there is hydraulic connectivity within the entire Adjudication Area, that the Adjudication Area has sustained a significant loss of groundwater since 1951, that the Adjudication Area has been in a state of overdraft since at least 2005 and that no surplus water has been available for pumping at least since then. (Statement of Decision, Phase 3 Trial (Jul. 18, 2011) at 5:17–6:4, 5:15–5:22, and 9:4–9:11.) Phelan Piñon Hills presented no evidence to the contrary. Hence, the Adjudication Area had no surplus water for Phelan Piñon Hills to pump since at least 2005.

Phelan Piñon Hills argues that surplus water exists in the Butte subbasin where Well 14 is located. In support of its contention, Phelan Piñon Hills offered testimony by Mr. Harder that the groundwater levels in the Butte subbasin remain relatively the same since the 1950's and there is no land subsidence in the Butte subbasin. Mr. Harder's testimony, however, does not contradict the Court's finding in Phase 3 that the Adjudication Area is in overdraft and no surplus water exists.

The Court has found that all areas of the Antelope Valley Adjudication Area hydrologically connected and a part of a single groundwater aquifer: "The Court defined the boundaries of the valley aquifer based upon evidence of hydro-connection within the aquifer. If there was no hydro-connectivity with the aquifer, an area was excluded from the adjudication." (Statement of Decision, Phase 3 Trial (Jul. 18, 2011) at p. 5.) This finding is consistent with Mr. Harder's testimony that the Butte sub basin is hydrologically connected to the Lancaster sub basin and that groundwater from the Butte sub basin recharges the adjudication aquifer.

Thus, it is not surprising that the overall overdraft condition would impact the Butte sub basin differently than it impacts the Lancaster sub basin. Uneven impact from groundwater pumping is not an indication that an overdraft condition does not exist or that surplus water exists. The Court finds that groundwater pumping in the Butte subbasin negatively impacts groundwater recharge in the Lancaster subbasin and that Phelan Piñon Hills failed to meet its burden of proof that surplus water exists within the Adjudication Area.

B. Phelan Piñon Hills' Sixth Cause of Action for a Declaration of Its Return Flow Rights

The Court finds and determines that Phelan Piñon Hills does not have return flows rights to groundwater in the Adjudication Area. There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

The right to return flows is limited to return flows from imported water. In *San Fernando, supra*, the California Supreme Court rejected a party's claim to a return flow right from native water, stating:

> 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.) The policy behind granting an importer the return flow right is to award the importer with the fruit of its labor. (*Santa Maria, supra,* 211 Cal.App.4th at p. 301 ["[O]ne who brings water into a watershed may retain a prior right to it even after it is used. . . . The practical reason for the rule is that the importer should be credited with the 'fruits ... of his endeavors in bringing into the basin water that would not otherwise be there.'"] [citations omitted].)

Phelan Piñon Hills asked the Court to adopt the doctrine of recapture as applied in a federal court litigation between Montana and Wyoming, in lieu of California law on return flow rights as set forth in *San Fernando* and *Santa Maria*. (See *Montana v. Wyoming* (2011) 131 S.Ct. 1765, 1774-75.) The doctrine of stare decisis prohibits this Court from applying case law from another jurisdiction when there are controlling decisions issued by the California Supreme Court and Courts of Appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,

455-456; *Fortman v. Forvaltningsbolaget Insulan AB* (2013) 212 Cal.App.4th 830, 844; *Kelly v. Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1337.)

The Court finds that Phelan Piñon Hills provided no credible evidence that demonstrated that Phelan Piñon Hills imported water or otherwise augmented the groundwater supply in the Adjudication Area. By its own admission, Phelan Piñon Hills never imported any water into the Adjudication Area, and has not net augmented the groundwater supply in the Adjudication Area. Mr. Harder's testimony indicates that the amount of groundwater pumped by Phelan Piñon Hills exceeds its total amount of claimed return flows within the Adjudication Area. Additionally, to the extent "return flows" from native water pumped by Phelan Piñon Hills enter the Adjudication Area, they merely "lessen the diminution occasioned" by Phelan Piñon Hills' extraction and do not augment the Adjudication Area's groundwater supply. (*Id.*)

C. Impact of Phelan Piñon Hills' Pumping of Groundwater Upon the Adjudication Area

The Court finds that Phelan Piñon Hills' pumping of groundwater from the Antelope Valley Groundwater Basin negatively impacts the Butte sub basin and the Adjudication Area. There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

It is uncontested that Phelan Piñon Hills' Well 14 is located in an area of the Adjudication Area generally known as the Butte subbasin, which borders the Lancaster sub basin. (Ex. Phelan CSD-27.) The Court finds that the Butte subbasin and the Lancaster sub basin are hydrologically connected. The Court also finds that groundwater from the Butte sub basin is a source of groundwater recharge for the Lancaster sub basin, and that groundwater pumping in the Butte sub basin could lower the groundwater level in the aquifer. The Court further finds that Phelan Piñon Hills' operation of its three groundwater wells located near Well 14 intercepts groundwater that would otherwise flow into and recharge the Adjudication Area. Based on these uncontroverted facts, the Court concludes that Phelan Piñon Hills' pumping of groundwater from the Antelope Valley Groundwater Basin as described in Bulletin 118 negatively impacts the Butte subbasin, the Lancaster subbasin, and the Adjudication Area.

D. Burden of Proof

The court finds that Phelan Piñon Hills has the burden of proof to establish each fact necessary to its second and sixth causes of action, and it failed to meet its burden of proof. There was no credible testimony or evidence offered by Phelan Piñon Hills to the contrary.

Evidence Code Section 500 provides, "[e]xcept as otherwise provided by law a party has the burden of proof as to each fact, the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." As the Cross-Complainant, Phelan Piñon Hills has the affirmative obligation to prove the facts that are essential to its claims, which it has failed to do for the reasons discussed above.

Phelan Piñon Hills does not deny that it has the burden of proof for its sixth cause of action for return flow rights. Phelan Piñon Hills contends that, before it has the burden of prove the existence of surplus water, existing appropriators, riparian, or overlying owners must establish their use is reasonable and beneficial. (*See e.g., Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 535 ["In the present case, while it is true the burden was on appellant to prove the existence of a surplus, that burden did not come into existence until after the respondent riparians first proved the amount required by them for reasonable beneficial purposes."].) The Court recognizes that while overdraft and native safe yield of the Adjudication Area were determined in Phase 3 trial and that Adjudication Area groundwater pumping in 2011 and 2012 exceeded the safe yield[2], this Court has not made a determination as to whether each party's water use is reasonable and beneficial. The Court will make such a determination prior to the entry of final judgment.

Phelan Piñon Hills has not proved that there is a surplus contrary to the court's determination that the basin aquifer is in overdraft. If a final judgment is entered based upon the overdraft, the court will be required to provide for the management of the basin aquifer and will provide for monitoring pumping to preserve the integrity of the aquifer. Phelan Piñon Hills has

[2] Statement of Decision, Phase 4 Trial (June 29, 2013).

five other causes of action in its cross complaint and as a pumper may be required to participate in the monitoring program which will establish the reasonable and beneficial use of each pumper within the aquifer as well as rights to produce water, whether as appropriator, overlying owner, or prescriber. The decision here only determines that at this time Phelan Piñon Hills is an appropriator without a priority as to overlying owners and appropriators with prescribed rights (if any).

Dated: FEB - 3 2015

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

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325201;

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, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

RICHARD WOOD, on behalf of himself and all other similarly situated v. A.V. Materials, Inc., et al., Superior Court of California, County of Los Angeles, Case No. BC509546

Judicial Council Coordination Proceeding No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

STATEMENT OF DECISION

The Court, having considered the evidence and arguments of counsel, orally issued its tentative decision on November 4, 2015 upon the conclusion of trial. For the reasons described in further detail below, the Court now issues its Statement of Decision and hereby affirms and confirms its previous statements of decision from earlier trial phases.

I. INTRODUCTION

Cross-complainants Los Angeles County Waterworks District No. 40, Palmdale Water District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District, California Water Service Company, Rosamond Community Services District, Desert Lake Community Services District, North Edwards Water District, City of Palmdale and City of Lancaster (collectively, the "Public Water Suppliers") brought an action for, *inter alia*, declaratory relief, alleging that the Antelope Valley Adjudication Area groundwater aquifer ("Basin") was and is in a state of overdraft and requires a judicial intervention to provide for water resource management within the Basin to prevent depletion of the aquifer and damage to the Basin. They also seek a comprehensive adjudication of Basin groundwater rights for the physical solution.

West Valley County Water District and Boron Community Services District are also Public Water Suppliers but not cross-complainants.

Cross-defendants include the United States, numerous private landowners (collectively, "Landowner Parties"), numerous public landowners ("Public Overliers"), Small Pumper Class, other public water suppliers, and Phelan Piñon Hills Community Services District ("Phelan"). Small Pumper Class and Willis Class filed actions to adjudicate their respective groundwater rights. All actions were coordinated and consolidated for all purposes.

The Court divided trial into phases. The first and second phases concerned the Basin boundaries and the hydrogeological connectivity of certain areas within the Basin, respectively. The third phase of trial determined that (1) the Basin was and has been in a state of overdraft since at least 1951; and (2) that the total safe yield of the Basin is 110,000 acre feet per year ("AFY"). The Court finds that the Basin's safe yield consists of 82,300 AFY of native or natural yield and the remaining yield results from the augmentation of the Basin by parties' use of

imported supplemental water supplies, i.e., State Water Project water for urban, agricultural and other reasonable and beneficial uses. The fourth phase of trial determined parties' groundwater pumping for calendar years 2011 and 2012.

The fifth and sixth phases of trial included substantial evidence of the federal reserved right held by the United States, evidence concerning Phelan's claimed groundwater rights, and concluded with the Court's comprehensive adjudication of all parties' respective groundwater rights in the Basin with a resulting physical solution to the Basin's chronic overdraft conditions.

This Statement of Decision contains the Court's findings as to the comprehensive adjudication of all groundwater rights in the Basin including the groundwater rights of the United States, Public Water Suppliers, Landowner Parties, Public Overliers, Small Pumper Class, Willis Class, Phelan, Tapia Parties, defaulted parties, and parties who did not appear at trial. After consideration as to all parties' respective groundwater rights and in recognition of those rights, the Court approves the stipulation and physical solution presented as the [Proposed] Judgment and Physical Solution (hereafter, "Judgment and Physical Solution" or "Physical Solution") in the final phase of trial and adopts it as the Court's own physical solution.

II. THESE COORDINATED AND CONSOLIDATED CASES ARE A COMPREHENSIVE ADJUDICATION OF THE BASIN'S GROUNDWATER RIGHTS

The Court finds that these coordinated and consolidated cases are a comprehensive adjudication of the Basin's groundwater rights under the McCarran Amendment (43 U.S.C. §666) and California law. In order to effect jurisdiction over the United States under the McCarran Amendment, a comprehensive or general adjudication must involve all claims to water from a given source. (*Dugan v. Rank* (1963) 372 U.S. 609, 618-19; *Miller v. Jennings* (5th Cir. 1957) 243 F.2d 157, 159; *In re Snake River Basin Water System* (1988) 764 P.2d 78, 83.)

Here, all potential claimants to Basin groundwater have been joined. They have been provided notice and an opportunity to be heard regarding their respective claims.

III. THE UNITED STATES HAS A FEDERAL RESERVED WATER RIGHT TO BASIN GROUNDWATER

The Judgment and Physical Solution provide the United States with a Federal Reserved Water Right of 7,600 AFY from the native safe yield for use for military purposes at Edwards Air Force Base and Air Force Plant 42 (collectively, "Federal Lands.") The Federal Lands consist of a combination of lands reserved from the public domain and acquired by transfer from public or private sources. In the fifth phase of trial, the Court heard extensive evidence presented by the United States as to its claimed rights to the Basin's groundwater. The Court finds such evidence to be both substantial and credible and determines that the evidence presented is sufficient to support that part of the Judgment and Physical Solution related to the United States' Federal Reserved Water Right, including the allocation of 7600 AFY.

The federal reserved water rights doctrine provides that when the federal government dedicates its lands for a particular purpose, it also reserves by implication, sufficient water necessary to accomplish the purposes for which the land was reserved. (*See, United States v. New Mexico* (1978) 438 U.S. 696; 715; *Cappaert v. United States* (1976) 426 U.S. 128, 138; *Arizona v. California* (1963) 373 U.S. 546, 601; *Winters v. United States* (1908) 207 U.S. 564; *United States v. Anderson* (9th Cir. 1984) 736 F.2d 1358.) The Federal Lands within the Basin are dedicated to a military purpose, and that purpose by necessity requires water. Relevant to this adjudication, the federal reserved water rights doctrine may apply to groundwater. (*In re the General Adjudication of all Rights to Use Water in the Gila River Sys. and Source* (1999) 989 P.2d 739, 748.)

The evidence at trial established that the water use on the Federal Lands is necessary to support the military purpose including water used for ancillary and supportive municipal, industrial and domestic purposes. Further, water reserved for federal enclaves is intended to satisfy the present and future water needs of the reservation. (*Arizona v California, supra*, 373 U.S. at p. 600.) The future water needs on the Federal Lands was supported by evidence and

expert witness testimony presented at trial that persuasively established the unique attributes of the Federal Lands, their capacity for additional missions, and the trends within the Air Force and military that make the Federal Lands a likely candidate for potential expansion of the mission. The evidence presented at the fifth phase of trial was sufficient to establish facts necessary to support that part of the Judgment and Physical Solution related to the recognition and quantification of the United States' Federal Reserved Water Right.

IV. CROSS-COMPLAINANT PUBLIC WATER SUPPLIERS HAVE PRESCRIPTIVE RIGHTS

Cross-complainant Public Water Suppliers sought an award of prescriptive rights against the Tapia parties, defaulted parties, and parties who did not appear at trial. As explained below, the Court finds that those Public Water Suppliers have established the requisite elements for their respective prescriptive rights claims against these parties.

A. Evidence of Adverse Use (Overdraft)

"A prescriptive right in groundwater requires proof of the same elements required to prove a prescriptive right in any other type of property: a continuous five years of use that is actual, open and notorious, hostile and adverse to the original owner, and under claim of right. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266 (*Santa Maria*) citing *California Water Service Co. v. Edward Sidebotham & Son* (1964) 224 Cal.App.2d 715, 726 (*California Water Service*).)

Because appropriators are entitled to the portion of the safe yield that is surplus to the reasonable and beneficial uses of overlying landowners, "[t]he commencement of overdraft provides the element of adversity which makes the first party's taking an invasion constituting a basis for injunctive relief to the other party." (*Santa Maria, supra*, 211 Cal.App.4th at p. 291 quoting *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 282 (*San Fernando*).) "The adversity element is satisfied by pumping whenever extractions exceed the safe yield." (*Santa Maria, supra*, 211 Cal.App.4th at p. 292; see also *San Fernando, supra*, 14 Cal.3d at 278 and 282; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 903, 928-929 (*Pasadena*).) This is because "appropriations of water in excess of surplus then invade senior basin rights, creating the element of adversity against those rights prerequisite to their owners' becoming

entitled to an injunction and thus to the running of any prescriptive period against them." (*San Fernando, supra*, 14 Cal.3d at p. 278 citing *Pasadena, supra*, 33 Cal.2d at pp. 928-29].) Undisputed evidence was submitted that the Cross-Complainant Public Water Suppliers' production of water from the Basin has been hostile and adverse to the Tapia parties, defaulted parties, and parties who did not appear at trial. Each Cross-Complainant Public Water Supplier has pumped water from the Basin for at least five continuous years while the Basin was in overdraft.

In the third phase of trial, the court took evidence on the physical manifestations of overdraft and, finding substantial evidence thereof, concluded that there was Basin-wide overdraft. The Court found that the overdraft conditions commenced by at least 1951 and continue to the present. During this entire period, there was no groundwater surplus, temporary or otherwise.[1]

The evidence of historical overdraft—years when pumping exceeded the safe yield—is credible, substantial and sufficient. There was voluminous evidence, both documentary and testimonial, showing that extractions substantially exceeded the safe yield since at least the 1950's. By the beginning of this century, the cumulative deficit was in the millions of acre-feet.

Here, the adversity element of prescription is satisfied by the various Cross-Complainant Public Water Suppliers pumping groundwater when extractions exceeded the safe yield beginning in the 1950's and continuing to the present time. The Court finds that the evidence of Cross-Complainant Public Water Supplier groundwater production in the Basin to be credible, substantial and undisputed.

B. Evidence of Notice

"To perfect a prescriptive right the adverse use must be 'open and notorious' and 'under claim of right,' which means that both the prior owner and the claimant must know that the adverse use is occurring. In the groundwater context that requires evidence from which the court

[1] There was no evidence of a temporary surplus condition. Overdraft commences when groundwater extractions exceed the safe yield plus the volume of a temporary surplus. (*San Fernando, supra*, 14 Cal.3d at 280.)

may fix the time at which the parties 'should reasonably be deemed to have received notice of the commencement of overdraft.'" (*Santa Maria, supra*, 211 Cal.App.4th at p. 293 citing *San Fernando, supra*, 14 Cal.3d at 283.) That can sometimes be difficult to prove. (*Santa Maria, supra,* 211 Cal.App.4th at p. 291.) But that was not the case here.

The Court finds that the long-term, severe water shortage in the Basin was sufficient to satisfy the element of notice to the Tapia parties, defaulted parties, and parties who did not appear at trial. The Court finds that there is credible evidence that the Basin's chronically depleted water levels within the Basin, and resulting land subsidence, were themselves well known. (See *Santa Maria, supra,* 211 Cal.App.4th at p. 293 ["In this case, however, the long-term, severe water shortage itself was enough to satisfy the element of notice.]) Undisputed evidence of notice was presented including the long-standing and widespread chronic overdraft; the decline and fluctuation in the water levels in the Basin aquifer; the resulting actions of state and local political leaders; the public notoriety surrounding the need and the construction of the State Water Project; the subsequent formation of the Antelope Valley East Kern Water Agency ("AVEK"); land subsidence in portions of the Basin; the loss of irrigated agricultural lands as groundwater conditions worsened; decades of published governmental reports on the chronic overdraft conditions including land subsidence; operational problems at Edwards Air Force Base due to land subsidence; and decades of extensive press accounts of the chronic overdraft conditions.

The Court heard credible expert witness testimony from Dr. Douglas Littlefield, a recognized water rights historian. His opinion was supported by substantial documentary evidence of the widespread information on overdraft conditions throughout the Basin since at least 1945. Of particular note, the Los Angeles County Board of Supervisors enacted an ordinance declaring the Antelope Valley groundwater basin to be in a state of overdraft in 1945.

The Court finds that there was abundant and continual evidence of actual and constructive notice of the overdraft conditions going back to at least 1945. The numerous governmental reports and newspaper accounts admitted into evidence are not hearsay because they are not admissible for the truth of their contents. (Evid. Code, § 1200.) "The truth of the contents of the documents, i.e., the truth of the assertion that the Basin was in overdraft, is not the point. Other

evidence proved that. The documents were offered to prove that the statements contained within them were made. That is not hearsay but is original evidence." (*Santa Maria, supra*, 211 Cal.App.4th at p. 294 citing *Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 316.)

Here, the documents are evidence that public statements were made and actions taken by local, state, and federal officials, demonstrating concern about depletion of the Basin's groundwater supply. The notice evidence is substantial, credible and sufficient that the chronic overdraft conditions were obvious to the Tapia parties, defaulted parties, and parties who did not appear at trial. At the local level, AVEK was formed in the 1960's specifically to -bring State Water Project water into the Basin as a response to persistent groundwater shortage problems. These facts are sufficient to support the conclusion that the Tapia parties, defaulted parties, and parties who did not appear at trial were on notice that the Basin was in overdraft.

C. **Continuous 5 Years Use**

Any continuous five-year adverse use period is sufficient to vest title in the adverse user, even if the period does not immediately precede the filing of a complaint to establish the right. (*Santa Maria, supra*, 211 Cal.App.4th at p. 266 [rejecting argument that prescription claim based on actions taken over 30 years ago should be barred by laches]; *see Pasadena, supra*, 33 Cal.2d at pp. 930-33 [upholding trial court's determination that a prescriptive right vested even though pumping failed to meet the adversity requirement during two of the three years immediately preceding the filing of the action]; *Lee v. Pacific Gas & Elec. Co.* (1936) 7 Cal.2d 114, 120.)

As to the prescriptive rights claims by each of the Cross-Complainant Public Water Suppliers, the Court concludes that they have the burden of proof. The Court finds that the Public Water Suppliers have met the burden of proof by undisputed evidence as to their following prescriptive rights against the Tapia parties, defaulted parties, and parties who did not appear at trial:

Public Water Supplier	Prescriptive Amount (AF)	Prescriptive Period
Los Angeles County Waterworks District No. 40	17,659.07	1995-1999
Palmdale Water District	8,297.91	2000-2004
Littlerock Creek Irrigation District	1,760	1996-2000
Quartz Hill Water District	1,413	1999-2003
Rosamond Community Services District	1,461.7	2000-2004
Palm Ranch Irrigation District	960	1973-1977
Desert Lake Community Services District	318	1973-1977
California Water Service Company	655	1998- 2002
North Edwards Water District	111.67	2000-2004

The above prescriptive amounts were established by evidence of each Public Water Supplier's respective groundwater production. Specifically, a five-year period with the lowest single year amount was used as the prescriptive right for each respective party's five-year period shown above.

The total prescriptive amount is greater than the amount of native water allocated to the Cross-Complainant Public Water Suppliers in the Judgment and Physical Solution. The Court finds that the amount of water allocated to the Cross-Complainant Public Water Suppliers is appropriate and reasonable, and does not unreasonably burden the groundwater rights of other parties. Additionally, West Valley County Water District and Boron Community Services District also pumped groundwater in quantities greater than their respective allocated amounts in the Judgment and Physical Solution, and their allocations are fair and reasonable in light of their

historical and existing reasonable and beneficial uses, and the significant and material reductions thereto required by the Physical Solution.

V. PHELAN DOES NOT HAVE AN APPROPRIATIVE RIGHT AND VOLUNTARILY DISMISSED ITS PRESCRIPTIVE RIGHT CLAIM

Phelan is also a public water supplier but it waived its prescriptive rights claim. Phelan seeks a court-adjudicated right to pump groundwater from the Basin for use outside of the Adjudication Area. For the reasons that follow, Phelan has no appropriative or any other right to Basin groundwater.

Phelan's service area falls entirely within San Bernardino County and outside the Adjudication Area. Phelan has one well within the Adjudication Area and several wells outside the Adjudication Area. Phelan uses that well water to provide public water supply to Phelan customers outside the Adjudication Area and within the adjacent Mojave Adjudication Area. In this Court's Partial Statement of Decision for Trial Related to Phelan, the Court found that "Phelan Piñon Hills does not have water rights to pump groundwater and export it from the Adjudication Area or to an area for use other than on its property where Well 14 is located within the adjudication area." (*Id.* at 6:19-21.) The Court makes this finding based on the following facts: Phelan owns land in the Adjudication Area but the water pumped from the well is provided to customers outside of the Adjudication Area (*Id.* at 7:3-6); the Basin has been in a state of overdraft with no surplus water available for pumping for the entire duration of Phelan's pumping (i.e., since at least 2005) (*Id.* at 4:9, 8:3-8); and the entire Basin, including the Butte sub-basin where Phelan pumps, is hydrologically connected as a single aquifer. (*Id.* at 8:2-3, 16-22).

The Court further finds that Phelan's pumping of groundwater from the Basin negatively impacts the Butte sub-basin. Phelan's expert witness, Mr. Tom Harder, testified that Phelan's groundwater pumping deprives the Basin of natural recharge that would otherwise flow into the Basin by taking water from the Adjudication Area for use within the Mojave Adjudication Area.

The Court finds that Phelan does not have return flow rights to groundwater in the Basin because any right to return flow is limited to return flows from imported water and Phelan has never imported water to the Basin (*Id.* at 9:3-10:6.); any groundwater flows generated from native

water pumped by Phelan are intercepted by three groundwater wells operated by Phelan just outside of the Adjudication Area; and the remaining flows that enter the Basin "merely 'lessen the diminution occasioned' by Phelan's extraction and do not augment the [Basin's] groundwater supply." (*Id.* at 10:7-11, 15-17, 23-25.)

In summary, Phelan claims an appropriative right to pump groundwater from the Basin. The Court has found that there has been overdraft from the 1950's to the present time and there is no surplus available for the acquisition or enlargement of appropriative rights by Phelan. Its appropriations of Basin groundwater invade other parties' Basin rights. Phelan voluntarily dismissed its prescriptive rights claim and thus has no right to pump groundwater from the Basin except under the terms of the Court-approved Physical Solution herein.

VI. STIPULATING LANDOWNER PARTIES AND PUBLIC OVERLIERS HAVE ESTABLISHED THEIR OVERLYING RIGHTS TO THE BASIN'S NATIVE SAFE YIELD

Each stipulating Landowner Party and Public Overlier claims an overlying right to the Basin's groundwater. They have proven their respective land ownership or other appropriate interest in the Basin and reasonable use and established their overlying right. (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 citing *California Water Service, supra*, 224 Cal.App.2d at p. 725; *Tulare Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 524-525 ("*Tulare*") [a trial court must determine whether overlying owners "considering all the needs of those in the particular water field, are putting the waters to any reasonable beneficial uses, giving consideration to all factors involved, including reasonable methods of use and reasonable methods of diversion"].)

As explained below regarding the Physical Solution herein, the Court finds that it is necessary to allocate the Basin's native safe yield to protect the Basin for all existing and future users. The Court received evidence of each stipulating Landowner Party's, each Public Overlier's and the Small Pumper Class's reasonable and beneficial use of Basin groundwater. "E]vidence of the quantity of a landowner's reasonable and beneficial use is necessary in many cases. . . . For example, when it is alleged that the water supply is insufficient to satisfy all users the court must

determine the quantity needed by those with overlying rights in order to determine whether there is any surplus available for appropriation." (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 citing *Tulare, supra,* 3 Cal.2d at p. 525.) "And it stands to reason that when there is a shortage, the court must determine how much each of the overlying owners is using *in order to fairly allocate the available supply among them.*" (*Santa Maria, supra,* 211 Cal.App.4th at p. 298 [emphasis added].)

Here, the Court heard evidence from four water engineers in the sixth phase of trial regarding the stipulating Landowner Parties and Public Overliers' reasonable and beneficial uses of water. Based 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; and the amounts allocated to each of these parties under the Judgment and Physical Solution are reasonable and do not exceed the native safe yield.

The Court finds that the Landowner Parties and the Public Overliers will be required to make severe reductions in their current and historical reasonable and beneficial water use under the physical solution. The evidence further shows that the Basin's native safe yield alone is insufficient to meet the reasonable and beneficial uses of all users, so the Court must allocate quantities for each party's present use. The Court therefore finds that there is substantial evidence that all allocations of groundwater in the Physical Solution herein and as stipulated by the parties will effectively protect the Basin for existing and future users.

The Court further finds that the native safe yield allocations amongst the parties in the Physical Solution make maximum reasonable and beneficial uses of the native safe yield under the unique facts of this Basin, as required by the California Constitution, Article X, section 2. The Court finds based on the credible testimony by water engineers Robert Beeby and Robert Wagner that the Landowner Parties' and Public Overliers' allocated amounts are reasonable and beneficial uses of water, and are significant reductions from their present and historical uses.

VII. SUPPORTING LANDOWNER PARTIES – TRIAL STIPULATIONS

On March 4, 2015, a large number of parties representing a majority of the total groundwater production in the Basin (the "Stipulating Parties") stipulated to the Proposed Judgment and Physical Solution, which was subsequently amended on March 25, 2015. Since March 25, 2015, a limited number of parties not signatory to, but supportive of, the Proposed Judgment and Physical Solution (a "Supporting Landowner Party" or collectively, "Supporting Landowner Parties") asserted claims to produce groundwater from the Basin and executed separate Trial Stipulations for Admission of Evidence by Non-Stipulating Parties and Waivers of Procedural and Legal Obligations to Claims by Stipulating Parties Pursuant to Paragraph 5.1.10 of the Judgment and Physical Solution ("Trial Stipulations") with the Stipulating Parties.

Under the Trial Stipulations, Supporting Landowner Parties agreed to reduce production of groundwater under Paragraph 5.1.10 of the Judgment and Physical Solution to the following amounts:

a. Desert Breeze MHP, LLC – 18.1 acre-feet per year;

b. Milana VII, LLC dba Rosamond Mobile Home Park – 21.7 acre-feet per year;

c. Reesdale Mutual Water Company – 23 acre-feet per year;

d. Juanita Eyherabide, Eyherabide Land Co., LLC and Eyherabide Sheep Company. – 12 acre-feet per year;

e. Clan Keith Real Estate Investments, LLC. dba Leisure Lake Mobile Estates – 64 acre-feet per year; and

f. White Fence Farms Mutual Water Co. No. 3 - 4 acre-feet per year.

g. LV Ritter Ranch, LLC – 0 acre-feet per year.

h. Robar Enterprises, Inc., Hi-Grade Materials Co., and CTR, a General Partnership – 200 acre-feet per year.

The Supporting Landowner Parties claim overlying rights to the Basin's groundwater. Each Supporting Landowner Party has proven its respective land ownership or other appropriate interest in the Basin, and its reasonable and beneficial use, and established its overlying right. (*Santa Maria, supra*, 211 Cal.App.4th at p. 298 citing *California Water Service, supra*, 224 Cal.App.2d at 725; *Tulare, supra*, 3 Cal.2d at p. 524.)

Here, the Court heard evidence from the Supporting Landowner Parties in the sixth phase of trial. Based on the credible and undisputed evidence presented by the Supporting Landowner

Parties, the Court finds that there is substantial and credible evidence that each Supporting Landowner Party has reasonably and beneficially used amounts of water. The Court finds that the Supporting Landowner Parties will be required to make severe reductions in their current and historical reasonable and beneficial water use under the Trial Stipulations and the Physical Solution. The Court further finds that there is substantial evidence that all allocations of groundwater in the Trial Stipulations and the Physical Solution will effectively protect the Basin for existing and future users.

Therefore, based on the evidence submitted by the Supporting Landowner Parties, the Court approves the Trial Stipulations executed by the Stipulating Parties and the Supporting Landowner Parties and finds that the production rights agreed to therein are for reasonable and beneficial uses.

VIII. SMALL PUMPER CLASS SETTLEMENT AGREEMENT IS APPROVED

The Small Pumper Class settlement agreement with the Public Water Suppliers which was previously approved conditionally by the Court is hereby approved. The Court finds that the agreement is fair, just, and beneficial to the Small Pumper Class members.

The Court finds the testimony by Mr. Thompson, the Court-appointed expert, to be credible and undisputed regarding Small Pumper Class water use. The Court finds that the average use of 1.2 AFY per parcel or household is reasonable, and is supported by Mr. Thompson's report and testimony. Given the variation in Class Member water use for reasonable and beneficial purposes, the same is true of individual Class Member use of up to 3 AFY. The Court finds reasonable all other provisions in the proposed Judgment and Physical Solution that impact or relate to the Small Pumper Class members rights or administration of those rights.

IX. CHARLES TAPIA, AS AN INDIVIDUAL AND AS TRUSTEE OF NELLIE TAPIA FAMILY TRUST

Charles Tapia, as an individual and as trustee of Nellie Tapia Family Trust (collectively, "Tapia Parties") failed to prove their groundwater use. The Court finds that the evidence and testimony presented by the Tapia Parties was not credible in any way and that the evidence presented by Tapia Parties was inherently contradictory. Consequently, the Court cannot make a

finding as to what amount of water was used on the Tapia Parties' land for reasonable and beneficial use. Therefore, the Tapia Parties have failed to establish rights to groundwater pumping based on the evidence and there is no statutory or equitable basis to give them an allocation of water under the physical solution. The Tapia Parties will be subject to the provisions of the Physical Solution.

X. WILLIS CLASS

The Willis Class members are property owners in the Basin who have never exercised their overlying rights. Because the Willis Class objected to the Physical Solution, it is entitled to have its rights tried as if there were no stipulated physical solution. (*Pasadena, supra*, 33 Cal.2d at p. 924 ["Since the stipulation made by the other parties as to the reduction in pumping by each is not binding upon appellant, it is necessary to determine appellant's rights in relation to the other producers in the same manner as if there had been no agreement."]; *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1251-1252, 1256 (*Mojave.*)

In certain situations, as the Willis Class argues, unexercised overlying rights can be exercised at any time, regardless of whether there has been any previous use. The Willis Class concedes, however, the Court has authority to reasonably limit or burden the exercise of their overlying rights. .

Here, despite the Willis Class' settlement with the Public Water Suppliers limiting the impact of the prescriptive right, the Court finds multiple grounds to condition the unexercised overlying rights of the Willis Class. Because the landowners' reasonable and beneficial use pumping alone exceeded the native safe yield while public water supplier pumping was taking place, the unexercised overlying rights of the Willis Class are not entitled to an allocation in the Physical Solution. If that were not required under these circumstances in this Basin, the Court finds that the pumping here by Landowner Parties, Public Overliers and the Small Pumper Class would become legally meaningless because all unexercised overlying rights could eliminate long-established overlying production.

Furthermore, the Willis Class settlement and Notice of Proposed Willis Class Action Settlement and Settlement Hearing specifically state that the court will make a determination of

rights in the physical solution that will bind the Willis Class as part of the physical solution. (Notice of Proposed Settlement at § 9 ["The Court is required to independently determine the Basin's safe yield and other pertinent aspects of the Basin after hearing the relevant evidence, and the Settling Parties will be bound by the Court's findings in that regard. In addition, the Parties will be required to comply with the terms of any Physical Solution that may be imposed by the Court to protect the Basin, and the Court will not be bound by the Settling Parties' agreements in that regard."].)

As explained below concerning the Physical Solution herein, the Court finds that the Basin requires badly needed certainty through quantifying all pumping rights, including overlying rights. The Court finds that the Willis Class overlying rights cannot be quantified because they have no present reasonable beneficial use; their future groundwater needs are speculative; substantial evidence shows that the Basin's groundwater supply has been insufficient for decades; and unexercised overlying rights create an unacceptable measure of uncertainty and risk of harm to the public including Edwards Air Force Base, existing overlying pumpers and public water supplier appropriators. This uncertainty and risk unreasonably inhibits critically-needed, long-range planning and investment that is necessary to solve the overdraft conditions in this Basin.

The Court has heard evidence on all parties' water rights. The Court has considered these water rights in relation to the reasonable use doctrine in Article X, section 2 of the California Constitution. The Court finds that the unique aspects of this Basin explained below and its chronic overdraft conditions prevent the Willis Class from having unrestricted overlying rights to pump Basin groundwater.

The Court also finds an alternative basis for conditioning the Willis Class unexercised overlying rights in Article X, section 2 of the California Constitution. The Court finds that because of the circumstances existing in the Basin it would be unreasonable under the Constitution to allow unexercised overlying rights holders to pump without the conditions imposed by the Physical Solution. The Legislature has now recognized that unexercised overlying rights holders may have conditions imposed upon them by a physical solution. (Assemb. Bill 1390, 2014-2015 Reg. Sess., ch.672, Code of Civil Procedure section 830, subdivision (b)(7),

http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf" http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_1351-1400/ab_1390_bill_20151009_chaptered.pdf.)

Here, the Court must impose a physical solution that limits groundwater pumping to the safe yield, protects the Basin long-term, and is fair and equitable to all parties. The Court's Physical Solution meets these requirements. It severely reduces groundwater pumping, provides management structure that will protect the Basin, balances the long-term groundwater supply and demand, and limits future pumping by management rules that are fair, equitable, necessary and equally applied to all overlying landowners.

The Court also notes that the Willis Class does not presently pump any groundwater and thus, has no present reasonable and beneficial use of water. The Court finds it would be unreasonable to require present users to further reduce their already severely reduced water use to reserve a supply of water for non-users' speculative future use. Here, quantification of overlying rights is necessary because there is a present need to allocate the native supply. Accordingly, the Landowner Parties, Public Overliers and Small Pumper Class are entitled to continue their significantly reduced production of the native or natural safe yield as set forth in the Physical Solution. (*Santa Maria, supra*, 211 Cal.App.4th at p. 300.)

The Court finds that without reasonable conditions upon the exercise of an overlying right in this overdrafted Basin, the Willis Class members' unrestricted right to exercise of the overlying right during shortage conditions would make it impossible to manage and resolve the overdraft conditions under the unique facts of this Basin and "[t]he law never requires impossibilities." (Civ. Code, § 3531.) The Court therefore finds that the Willis Class members have an overlying right that is to be exercised in accordance with the Physical Solution herein.

XI. PARTIES WHO FAILED TO APPEAR AT TRIAL

Parties who failed to appear at trial failed to meet their burden to produce evidence of ownership, reasonable and beneficial use, and self-help. The Court finds that the Public Water Suppliers have established their prescriptive rights claims as against these parties. They are

bound by the Physical Solution and their overlying rights are subject to the prescriptive rights of the Public Water Suppliers.

XII. PHYSICAL SOLUTION

A. Legal Standard

"'Physical solution' is defined as 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 the state's limited resource.'" (*Santa Maria, supra*, 211 Cal.App.4th at pp. 287-288 quoting *California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.) A court may use a physical solution to alleviate an overdraft situation. (*Ibid.*)

"'[I]f a physical solution be ascertainable, the court has the power to make and should make reasonable regulations for the use of the water by the respective parties, provided they be adequate to protect the one having the paramount right in the substantial enjoyment thereof and to prevent its ultimate destruction, and in this connection the court has the power to and should reserve unto itself the right to change and modify its orders and decree as occasion may demand, either on its own motion or on motion of any party." (*Santa Maria, supra*, 211 Cal.App.4th at p. 288 quoting *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 383–384 (*Peabody.*)) The California Supreme Court has encouraged the trial courts "to be creative in devising physical solutions to complex water problems to ensure a fair result consistent with the constitution's reasonable-use mandate." (*Santa Maria, supra,* 211 Cal.App.4th at p. 288 citing *Tulare, supra*, 3 Cal.2d at 574.)

"'So long as there is an 'actual controversy,' the trial court has the power to enter a judgment declaring the rights of the parties (Code Civ. Proc., § 1060) and to impose a physical solution where appropriate (*City of Lodi v. East Bay Mun. Dist.* (1936) 7 Cal.2d 316, 341 ("*Lodi*")). 'Each case must turn on its own facts, and the power of the court extends to working out a fair and just solution, if one can be worked out, of those facts.' (*Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 560–561 ("*Vail*").) . . . .[T]he court not only has the power but the duty to fashion a solution to insure the reasonable and beneficial use of the state's water resources as required by article X, section 2. (*Lodi, supra*, at 341.) The only restriction is that, absent the

party's consent, a physical solution may not adversely affect that party's existing water rights. (Cf. *Mojave, supra*, 23 Cal.4th at pp. 1243–1244, 1250–1251.) (*Santa Maria, supra*, 211 Cal.App.4th at p. 288.) Pursuant to this duty a trial court is obliged to consider a physical solution "when it can be done without substantial damage to the existing rights of others." (*Peabody, supra,* 2 Cal.2d at p. 373.)

A trial court has broad authority to use its equitable powers to fashion a physical solution. (*Mojave, supra,* 23 Cal.4th at p. 1249; *Santa Maria, supra*, 211 Cal.App.4th at p. 288 ["Each case must turn on its own facts, and the power of the court extends to working out a fair and just solution"] [quoting *Vail, supra*, 11 Cal.2d at pp 560-61].) The physical solution, however, must carry out the mandates of Article X, Section 2 of the California Constitution, including the mandate that the state's water resources be put to "beneficial use to *the fullest extent of which they are capable.*" (*Lodi, supra,* 7 Cal.2d at p. 340 [emphasis added] quoting Cal.Const., art. XIV, § 3.) In addition, while a physical solution may permit the modification of existing water uses practices, it may not allow waste. (*Pasadena, supra,* 33 Cal.2d at pp. 948-949 [Physical solution should "avoid [] waste, ... at the same time not unreasonably and adversely affect the prior appropriator's vested property right."] [emphasis added in original]; *Lodi, supra*, 7 Cal.2d at 341 ["Although the prior appropriator may be required to make minor changes in its method of appropriation in order to render available water for subsequent appropriators, it cannot be compelled to make major changes or to incur substantial expense."] citing *Peabody, supra,* 2 Cal.2d at p. 376.)

Here, the Court finds that because the Basin is and has been so severely overdrafted and contains so much undeveloped land that existing pumping must be limited and constraints on new pumping are required in the Physical Solution to protect the Basin, Edwards AFB and the public at large. Accordingly, the Court finds that water allocations and reasonable conditions on new pumping are required in the Physical Solution.

Factors that weigh into the reasonableness of water allocations in a physical solution include actual use (*Tulare, supra*, 3 Cal.2d at 565), whether use has been reasonable and

beneficial (*id.* at 526); and the effect of the use on the basin and overall water supply. (*Lodi, supra*, 7 Cal.2d at pp. 344-345.)

B. A Physical Solution Is Required Now

The Court finds that a physical solution with an allocation of water rights is required now. The Basin has been in a state of overdraft since at least 1951. (Statement of Decision Phase Three Trial, pp. 5:17-6:28 ("Phase 3 Decision"); Partial Statement of Decision for Trial Related to Phelan Piñon Hills Community Services District (2nd and 6th Causes of Action), p. 4, fn. 1.) In the phase three trial, the Court determined that the Basin has a safe yield of 110,000 AFY, consisting of a native safe yield of 82,300 AFY and return flows. (Phase 3 Decision at 9:27-28; see also Supplemental Request for Judicial Notice, posted on the Court's website on January 24, 2014 ("Supplemental RJN"), Ex. II, at 30:8-31:4.). The Court finds that groundwater production has exceeded this native and total safe yield and continues to exceed this safe yield causing harm to the Basin. (Phase 3 Decision at 6:18-27, 7:24-26.)

C. The Physical Solution Is Unique Because Each Basin Is Unique

The Court finds that there are facts which necessarily make the Physical Solution here unique and different from any other groundwater basin's physical solution.

The Basin encompasses more than 1,000 square miles of desert land. It is one of the driest locations in California. The Basin is mostly recharged by nearby mountain front runoff as well as lesser amounts of recharge from use of State Water Project water. While drought conditions impact California, they are particularly harmful to the Basin because it has limited surface stream supplies, and no coastal desalination facilities or other significant natural sources of supply (except for mountain front recharge).

The largest landowner is the United States which operates Edwards Air Force Base ("Edwards AFB") and other facilities in the Antelope Valley such as the "Plant 42" site. The federal facilities including Edwards AFB provide strategic national defense and aerospace capabilities and are critical to the local economy including the cities of Palmdale and Lancaster. Testimony by the United States establishes that Edwards AFB is unique amongst the federal

military bases because it has and continues to conduct test flights and aerospace operations that cannot be conducted elsewhere.

Due to its location within the Basin, Edwards AFB has been and continues to be particularly prone to chronic lowering of local groundwater levels and land subsidence which is caused by groundwater pumping throughout the Basin. The Court received substantial evidence concerning the land subsidence in and around Edwards AFB.

The Court finds that there must be a physical solution which stops the overdraft conditions in and around Edwards AFB and that protects it from the future exercise of overlying rights that would exacerbate the existing overdraft or cause it anew. The Court finds that parties cannot continue to exercise their overlying rights in an unregulated manner because that will continue to harm the Basin and, in particular, Edwards AFB. The Court finds that the Physical Solution here allows for the reasonable exercise of overlying rights by all parties in a manner that will protect the operations at Edwards AFB and the rest of the Basin for all parties.

The Court finds that the current cost of supplemental State Water Project water from AVEK is approximately $310 per acre foot – even in today's severe drought conditions. The Court finds that the cost of supplemental State Water Project water is approximately $26 a month (i.e., $310 to $312 AFY) that the cost for an acre foot of water is less than what most Californians would pay for their household water needs. The Court finds that it is fair, reasonable and beneficial for the Willis Class members to pay for the cost of replacement water from AVEK if a Class member should decide to exercise its overlying right by installing a groundwater well and using its water for reasonable and beneficial uses. The Court further finds that the Physical Solution provides that the Water Master has discretion to allow a Willis Class member to pump groundwater without having to pay any replacement assessment in certain circumstances.

D. <u>The Court Uses Its Independent Judgment To Adopt The Physical Solution</u>

A large number of parties representing a majority of the total groundwater production in the Basin ("Stipulating Parties") have stipulated to the Physical Solution. The Court, however, uses its own independent judgment and discretion to approve the Physical Solution here; the

Court adopts the Physical Solution as its own physical solution for the Basin after it determined and considered the parties' respective groundwater rights.

E. All Parties Are Bound By The Physical Solution

The Willis Class challenges the Physical Solution's allocation of native safe yield to those who exercise and have exercised their overlying rights. All present and historical users of the Basin's overdrafted groundwater supply have a legally protected interest in the native yield after their sustaining severe restrictions that will be imposed by the Physical Solution to decades-long water shortage conditions. The Willis Class interest in the long term health of the Basin is the same as every other overlying user of groundwater; there is no conflict between the Willis Class and the other parties in the Physical Solution. And the Court's continuing jurisdiction protects the Willis Class from the possibility that a future exercise of the overlying right by any party could adversely affect them.

The Willis Class asks to not be bound by the Physical Solution. The Willis Class argues that they cannot be bound by provisions they did not agree to, but the Court finds otherwise. "'[I]t should be kept in mind that the equity court is not bound or limited by the suggestions or offers made by the parties to this, or any similar, action.' The court 'undoubtedly has the power regardless of whether the parties have suggested the particular physical solution or not, to make its injunctive order subject to conditions which it may suggest . . . .'" (*Santa Maria, supra*, 211 Cal.App.4th at p. 290 quoting *Tulare, supra*, 3 Cal.2d at 574.) The Court finds that to protect the Basin it is necessary that all parties participate and be bound by the groundwater management provisions of the Physical Solution.

F. The Physical Solution Protects the Basin by Preventing Future Overdraft

The Physical Solution will protect all water rights in the Basin by preventing future overdraft, improving the Basin's overall groundwater levels, and preventing the risk of new land subsidence. (See *Lodi, supra*, 7 Cal.2d at 344-45.) Dr. Williams testified that pumping at existing levels will continue to degrade and cause undesirable results in the Basin, but that the Physical Solution will bring the Basin into balance and stop undesirable results including land

subsidence. The ramp-down of groundwater production set forth in the Physical Solution will bring pumping in the Basin within its safe yield.

Furthermore, the Physical Solution is likely to lead to additional importation of water into the Basin and thus additional return flows which will help to restore groundwater levels in the Basin in two ways. First, if existing groundwater users exceed their respective allocations, they will pay a replacement assessment that will be used to bring additional imported water into the Basin. Second, because allocations are capped at the total yield of the Basin, new production, whether by existing pumpers or new pumpers will result in importation of additional supplemental water into the Basin. Finally, the Physical Solution allows parties to store water in the Basin which will improve water levels. The Court further finds that the carryover and transfer provisions in the Judgment and Physical Solution are reasonable and beneficial, and are essential in the management of the Basin.

Dr. Williams testified as to what will happen to groundwater levels if current pumping levels continue without a physical solution, compared to scenarios in which parties pump in accordance with the Physical Solution. His testimony showed that water level decline and subsidence risk will decrease under the Physical Solution. In the absence of a physical solution, he testified, subsidence will continue to be a problem. This credible and undisputed testimony demonstrates that management by the Physical Solution is necessary to sustain groundwater levels and protect future use of entitlements in the Basin.

The Court finds that the Basin's safe yield, together with available supplemental supplies, are sufficient to meet current water demands. This confirms further that the Physical Solution will work for this Basin

G. <u>The Physical Solution Reasonably Treats All Overlying Rights</u>

The Court finds that each party is treated reasonably by the Physical Solution; the priority of rights in the Basin is preserved; no vested rights are eliminated; and allocations are reasonably tied to reasonable and beneficial use and the health of the Basin. (See *Lodi, supra*, 7 Cal.2d at 341; *Mojave, supra*, 23 Cal.4th at p. 1250; *Pasadena, supra*, 33 Cal.2d at pp. 948-949.)

1) Federal Reserved Rights

The United States has a right to produce 7,600 AFY from the native safe yield as a federal reserved water right for use for military purposes at Edwards Air Force Base and Air Force Plant 42. (See *United States v. New Mexico, supra,* 438 U.S. at p. 700; *Cappaert v. United States, supra,* 426 U.S. at p. 138.) The Physical Solution preserves the United States' right to produce 7,600 AFY at any time for uses consistent with the federal reserved water right, and shields the United States' water right from the ramp down and pro-rata reduction due to overdraft. (Physical Solution, ¶5.1.4.) When the United States does not take its allocation, the Physical Solution provides for certain parties who have cut back their present water use to use that water consistent with the Constitutional mandate of Article X, Section 2 to put the water to its fullest use..

2) Small Pumper Class

Small Pumper Class members are allocated up to and including 3 AFY per existing household for reasonable and beneficial use on their overlying land, with the known Small Pumper Class members' aggregate use of native supply limited to 3,806.4 AFY. A Small Pumper Class member taking more than 3 AFY is subject to a replacement water assessment. (Physical Solution, ¶5.1.3.) The Court has already admitted evidence regarding the Small Pumper Class' use of water by the Court-appointed expert, Tim Thompson.

3) Overlying Landowner Parties and Public Overliers

The Physical Solution allocates approximately 82 percent of the adjusted native safe yield to the Landowner Parties and Public Overliers. (Physical Solution section 5.1.5, Ex. 4.) The allocation is fair and reasonable in light of their historical and existing reasonable and beneficial uses, and the significant and material reductions thereto required by the Physical Solution.

4) Unknown Existing Pumpers

The Physical Solution provides for the allocation of groundwater to unknown *existing* pumpers that prove their respective entitlement to water rights in the future. (Physical Solution, ¶¶5.1.10, 18.5.13.) Such allocations will not result in continuing overdraft, as the Physical Solution provides for the Water Master to adjust allocations or take other action necessary to prevent overdraft. (*Id.* at ¶18.5.13.2.) The Court finds that the Physical Solution approved herein

provides sufficient flexibility to the Court and the Water Master so that the Physical Solution is implemented fairly and reasonably as to any unknown existing users.

5) Return Flows From Imported Water

Return flow rights exist with respect to foreign water brought into the Basin, the use of which augments the Basin's groundwater. (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-78; *San Fernando*, *supra*, 14 Cal.3d at pp. 257-259, 262-263; *Santa Maria*, *supra*, 211 Cal.App.4th at p. 301.) Return flows are calculated by multiplying the quantity of water imported and used in the Basin by a percentage representing the portion of that water that is expected to augment the aquifer. (*Ibid.*) Paragraph 18.5.11 provides the Water Master with flexibility to adjust the return flow percentages in the seventeenth year. The Court finds that the right to return flows from imported State Water Project water is properly allocated as set forth in paragraph 5.2 and Exhibit 8 of the Judgment and Physical Solution.

6) Phelan

The Physical Solution permits Phelan to pump up to 1,200 AFY from the Basin and deliver the pumped water outside of the Basin for use in the Phelan service area if that amount of water is available without causing material injury and provided that Phelan pays a replacement water assessment. (Physical Solution, ¶6.4.1.2.) This allocation and the correlating assessment are fair and reasonable in light of findings made by the Court.

7) Defaulted Parties and Parties That Did Not Appear At Trial

Defaulting parties and parties who did not appear at trial failed to meet their burden to produce evidence of ownership, reasonable and beneficial use, and self-help. They are bound by the Physical Solution and their overlying rights, if any, are subject to the prescriptive rights of the Public Water Suppliers.

~~8) Robar Enterprises, Inc., Hi-Grade Materials Co., CJR, a general partnership.~~

~~The Court has severed Robar Enterprises, Inc., Hi-Grade Materials Co., CJR, a general partnership (collectively, "Robar") from the trial and retains jurisdiction over Robar's groundwater rights claim.~~

H. The Physical Solution Is Consistent With the Willis Class Settlement Agreement

The Public Water Suppliers entered into a Stipulation of Settlement with the Willis Class ("Willis Class Stipulation" or "Stipulation") which was approved by the Court on September 22, 2011. As the Court has already recognized, the Stipulation—which was only between the Willis Class and the Public Water Suppliers—did not and cannot establish a water rights determination binding upon all parties in these proceedings. (Order after November 18, 2010 Hearing ["the court determination of physical solution cannot be limited by the [Stipulation]"; the Stipulation "may not affect parties who are not parties to the [Stipulation]"].) Rather, water rights must be determined by the Court as part of a comprehensive physical solution to the Basin's chronic overdraft condition. Indeed, the Willis Class acknowledged in the Stipulation that the ultimate determination of its reasonable correlative right would depend upon the existing and historical pumping of all other overlying landowners in the Basin. (Stipulation, ¶IV.D.3.) While the Stipulation recognized that the Willis Class members may receive whatever is later to be determined by the Court as their reasonable correlative right to the Basin's native safe yield for actual reasonable and beneficial uses, it could do nothing more. Nothing in the Decision, Judgment, or Physical Solution, alters the agreed-upon allocations between the Public Water Suppliers and the Willis Class. That relationship has no impact on the Court's duty to impose a Physical Solution that protects the Basin.

The Court finds that the Physical Solution is consistent with the Willis Class Stipulation for at least the following reasons:

1) The Willis Class Stipulation recognizes that there would be Court-imposed limits on the Willis Class' correlative share of overlying rights because the Basin is and has been in an overdraft condition for decades;

2) No member of the Willis Class has established any present right to produce groundwater for reasonable and beneficial use based on their unexercised overlying claim; and

3) The Physical Solution recognizes the Willis Class' share of correlative overlying rights and does not unreasonably burden its members' rights given the significant reductions in groundwater pumping and increased expense incurred by the Stipulating Parties in the Physical Solution. At

this time, more than the entire native safe yield is being applied to reasonable and beneficial uses.

In the Willis Class Stipulation, the Willis Class also agreed that a Court-imposed physical solution may require the installation of a meter on any groundwater pump by a Willis Class member (Willis Class Stipulation at ¶V.B. at 11:28-12:7) and that Willis Class member production from the Basin above its allocated share in a physical solution would require the member to import replacement water or pay a replacement assessment (*Id.* at ¶IV.D. at 12:19-26). The requirements set forth in Paragraphs 9.2 and 9.2.1 of the Physical Solution are thus consistent with the Willis Class Stipulation.

I. **The Physical Solution Does Not Unreasonably Affect the Willis Class**

As overlying landowners in an overdrafted basin, the members of the Willis Class are entitled to a fair and just proportion of the water available to overlying landowners, i.e., a correlative right. (*Katz v. Walkinshaw* (1903) 141 Cal. 116, 136; see also Willis Class Stipulation, ¶III.D at 5:26-6:2.) The Willis Class members, however, have never exercised their rights to produce groundwater from the Basin. Recognizing this fact, the Physical Solution does not provide for an allocation to the Willis Class, but preserves their ability to pump groundwater in the future. This right cannot be unrestricted, however, due to the unique aspects of this Basin, its long-standing overdraft conditions, and the significant reductions in groundwater use by parties who have relied and continue to rely upon the Basin for a sustainable groundwater supply.

Here, the Court must fashion a physical solution that limits groundwater pumping to the safe yield, protects the Basin long-term, and is fair and equitable to all parties. Willis Class members will have the opportunity to prove a claim of right to the Court (Physical Solution, ¶5.1.10) or, like all other pumpers in the Basin, apply to the Water Master for new groundwater production. (¶18.5.13). Thus, the Willis Class' correlative rights are more than fairly protected by the Physical Solution.

As discussed above, to the extent the Court finds that a replacement water assessment is necessary the Court finds it is reasonable. Significantly, the assessment is consistent with the Willis Class Stipulation in which the Willis Class agreed to pay a replacement assessment if a

member produced "more than its annual share" of the native safe yield less the amount of the federal reserved right. In addition, the replacement assessment is imposed uniformly on all existing producers in the Basin that produce more than their available allocation in any given year. (Physical Solution, ¶9.2.)

In today's unprecedented drought conditions with the cost of water rising, a replacement assessment for an acre foot of water would be approximately $310. Assuming an acre foot of water is sufficient for domestic use in the Antelope Valley as testified by the court-appointed expert, Tim Thompson, the average monthly cost for a Willis Class member would be a mere $26 – a monthly amount less than what most Californians are likely paying for that amount of water. The Court finds that the replacement assessment is not an unreasonable burden upon any Willis Class member who may someday install a well for domestic use.

But even the small amount of replacement assessment cost can be avoided under the Physical Solution if the Water master determines that the particular Willis Class member's domestic use will not harm the Basin or other groundwater users. There is no reasonable basis for any argument that a replacement assessment somehow unreasonably burdens or significantly harms a Willis Class member who might have to pay a relatively small amount for a relatively large amount of water.

J. <u>The Willis Class' Due Process Rights Are Not Violated</u>

The Court finds that the Physical Solution does not "extinguish" the water rights of the Willis Class, as the Willis Class claims. Rather, the Physical Solution allows Willis Class members—who have never put their overlying rights to reasonable and beneficial use - to prove their entitlement to a Production Right to the Court or apply as a new pumper to the Water master. (Physical Solution, ¶¶5.1.10 & 18.5.13.) The Willis Class had notice and an opportunity to present evidence on this and all other issues determined by the Court.

The Court finds that the Willis Class received adequate notice that the Court would adopt a physical solution that could restrict or place conditions on the Willis Class members' ability to pump groundwater. Due process protects parties from "arbitrary adjudicative procedures." (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1070.)

No such risk exists here because the Court-approved notice to the Willis Class, put them on notice that they would be subject to a physical solution yet to be approved by the Court. The notice stated that the Willis Class members "will be bound by the terms of any later findings made by the Court and any Physical Solution imposed by the Court" and "it is likely that there will be limits imposed on the amount of pumping in the near future." (Notice of Proposed Settlement at §§ 9 & 17.)

The Willis Class has actively participated in these proceedings since January 11, 2007, knows that the other Landowner Parties and Public Overliers claim a correlative share of the Basin's native safe yield, and agreed in the Willis Class Stipulation that they would be subject to the Court's future jurisdiction and judgment and be bound by a physical solution.

XIII. CONCLUSION

The Court finds that the Physical Solution is required and appropriate under the unique facts of the Basin. The Physical Solution resolves all groundwater issues in the Basin and provides for a sustainable groundwater supply for all parties now and in the future. The Physical Solution addresses all parties' rights to produce and store groundwater in the Basin while furthering the mandates of the State Constitution and the water policy of the State of California. The Court finds that the Physical Solution is reasonable, fair and beneficial as to all parties, and serves the public interest.

Dated: December 23 2015

JUDGE OF THE SUPERIOR COURT

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LAW OFFICES OF
BEST BEST & KRIEGER LLP
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612

PROOF OF SERVICE

I, Isabel Grubbs, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP,300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On April 5, 2018, I served the following document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT'S MOTION FOR DECLARATORY RELIEF RE JUDGMENT ENTERED DECEMBER 23, 2015 AND WATERMASTER RESOLUTION NO. R-18-04 REGARDING REPLACEMENT WATER ASSESSMENTS FOR 2016 AND 2017; DECLARATION OF WENDY Y. WANG

☒ by posting the document(s) listed above to the Antelope Valley Watermaster website with e-service to all parties listed on the websites Service List.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 5, 2018, at Los Angeles, California.

Isabel Grubbs

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