

1 H. Jess Senecal (CSB #026826)
2 Thomas S. Bunn III (CSB #89502)
3 LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP
4 301 N. Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
Telephone: (626) 793-9400
Facsimile: (626) 793-5900

**EXEMPT FROM FILING FEES UNDER
GOVERNMENT CODE § 6103**

5 Attorneys for Defendant and Cross-Complainant,
6 Palmdale Water District
7

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

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

Judicial Council Coordination
Proceeding No. 4408

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

[Assigned to The Honorable Jack Komar, Judge
Santa Clara County Superior Court, Dept. 17]

Santa Clara Court Case No. 1-05-CV-049053

15 **REPLY IN SUPPORT OF PROPOSED**
16 **STATEMENT OF DECISION IN RESPONSE**
17 **TO CROSS-DEFENDANTS' OBJECTIONS**

18 Date: July 11, 2011
19 Time: 11:00 a.m.
Dept: 316, Central Civil West

20
21 **REPLY IN SUPPORT OF PROPOSED STATEMENT OF DECISION**
22

23 **I. OVERVIEW**

24 At the close of an extensive Phase Three trial, the Court, taking all of the evidence presented by
25 the parties under submission, entered its Tentative Decision on May 6, 2011. The two issues central to
26 the dispute adjudged by the Court during Phase Three (and the subject of its Tentative Decision) were:
27 (1) overdraft and (2) safe yield. Specifically, as concerned overdraft, the Public Water Suppliers (and
28 other parties) asserted that the Basin had reached a condition of overdraft. The landowner parties

1 (herein “Cross-Defendants”) disagreed, maintaining that, while the Basin may have been in overdraft in
2 prior years, the Basin had normalized and a finding of overdraft could not lie. The Public Water
3 Suppliers, mindful of the overdraft condition, requested that this Court determine the safe yield of the
4 Basin and impose a physical solution, or some other remedy, to help achieve some level of sustainability
5 for the Basin for the long-term. Cross-Defendants, on the other hand, maintained that the absence of an
6 overdraft condition precluded the Court from making a single safe yield determination, and sought,
7 instead, a range of values representing the Basin’s safe yield.

8 Both overdraft and safe yield are highly technical inquiries, to determine these inquiries requires
9 the Court to weigh the physical evidence adduced during trial and consider the theories and analyses
10 advanced by the parties’ own hydrologist and geologist expert witnesses, who opined on precipitation
11 and runoff, streamflow, evapotranspiration, and other hydrologic conditions in the Basin. Ultimately,
12 the Court decided that the Public Water Suppliers had, by a preponderance of the evidence, established
13 that the Basin was currently in overdraft and had been in overdraft for at least 51 years. The Court also
14 considered all of the evidence informative to the Court regarding the proper safe yield calculation
15 (variables include but are not limited inputs such as natural recharge, runoff, and stream flow). Here,
16 again, the Court concluded that the Public Water Suppliers had established, by a preponderance of the
17 evidence, that the safe yield should be approximated at 110,000 acre-feet per year. The basis for these
18 findings, and more, was discussed in the Court’s Tentative Decision.

19 On May 16, 2011, Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. (“Bolthouse”)
20 requested that the Court issue a Statement of Decision explaining “the factual and legal basis” for its
21 Tentative Decision in accordance with Code of Civil Procedure section 632. (Request at 2.) Several of
22 the other landowner parties joined in this Request. The Court subsequently directed Los Angeles
23 County Waterworks District 40 (“District 40”) to draft the Statement of Decision, which District 40
24 prepared and filed on June 9, 2011. (Cal. Rules of Court, Rule 3.1590(c),(f).) Objections to the
25 proposed Statement of Decision ensued.

26 As discussed *infra*, the proposed Statement of Decision, based on the findings set forth in the
27 Tentative Decision, more than adequately addresses the material issues adjudicated during Phase Three,
28 those of overdraft and safe yield, and sets forth the principal factual and legal bases underlying the

1 Court's determination, as required by law. Cross-Defendants' discontent with the outcome of Phase
2 Three, as evidenced by their Objections, is not properly addressed here. Indeed, the Objections largely
3 invite the Court to revisit a myriad of ancillary evidentiary claims already determined at trial and
4 appropriately treated briefly by (or excluded from) the Statement of Decision, also as instructed by law.
5 (*Lynch v. Cook* (1983) 148 Cal.App.3d 1072, 1080; see also *People v. Casa Blanca Convalescent*
6 *Homes, Inc.* (1984) 159 Cal.App.3d 509, 524 [the judge is not required "to make minute findings as to
7 individual items of evidence"].)

8 Although the principles set forth above are sufficient to respond to most of the Objections, the
9 discussion below also addresses several specific issues raised by the Objections.

10 **II. ARGUMENT**

11 **A. The Court Is Not Required To Make Findings On Subsidiary Issues**

12 Upon request, the Court will issue a Statement of Decision, the objective of which is to set forth
13 the factual and legal basis for the Court's decision as to each of the principal controverted issues. (Code
14 of Civ. Proc., § 632 [emphasis added]; Cal. Rules of Court, Rule 3.1590(d); *Muzquiz v. City of*
15 *Emeryville* (2000) 79 Cal.App.4th 1106,1124 ["*Muzquiz*"].) As expressly set forth in the governing
16 statute, and as further underscored by case law, a Statement of Decision requires findings on principal
17 issues only; subsidiary issues need not be addressed. (Code of Civ. Proc., § 632; *Wolf v. Lipsy* (1985)
18 163 Cal.App.3d 633, 643.) A "principal issue" is a material issue that "is relevant and essential to the
19 judgment and closely related to the ultimate issues in the case." (*Kuffel v. Seaside Oil Co.* (1977) 69
20 Cal.App.3d 555, 565 ["*Kuffel*"].) Findings are simply not required on every subsidiary matter on which
21 evidence has been received at trial, even though the subsidiary matter may be relevant to the ultimate
22 issues of fact. (*Id.*) In preparing a statement of decision, the *ultimate* (and not the evidentiary) facts are
23 presented in narrative form, the reasoning of the court is succinctly stated, and the analytical route
24 traveled by the court must be exposed. (See *Lynch v. Cook* (1983) 148 Cal.App.3d 1072, 1080; see also
25 *People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 524 ["*Casa Blanca*"].)

26 The Statement of Decision in this case appropriately disclosed the factual and legal bases upon
27 which this Court decided the material issues of overdraft and safe yield—issues well within the scope of
28 the Phase Three trial—striking a reasonable balance between the level of detail demanded by some of

1 the parties with what the law requires. To provide the parties with an adequate roadmap of the evolution
2 of the legal issues, the Statement of Decision: reiterated the parties' positions, set forth the experts'
3 views on the multitude of factors dutifully weighed by this Court, devoting several pages to the
4 reasoning employed in finding there was overdraft and in calculating safe yield.

5 Cross-Defendants' Objections challenge the essence of the Statement of Decision, seeking
6 disclosure of specific evidentiary findings. A party's request may ask for the legal or factual basis for
7 the judgment, but it may not "interrogate the judge" on evidentiary matters. (*Casa Blanca, supra*, 159
8 Cal.App.3d at 525.) Toward this end, Cross-Defendants' Objections exemplify the very kind of
9 "inquisition and rehearing of evidence" disfavored by and unsupported in law. (*In re Marriage of*
10 *Balcof* (2006) 141 Cal.App.4th 1509, 1530 [finding improper a request for statement of decision that
11 inappropriately sought answers to 75 questions and findings on evidentiary facts]; *Muzquiz, supra*, 79
12 Cal.App.4th at 1126 [a statement of decision does not resolve evidentiary conflicts, or respond point by
13 point to all of the issues presented in a party's proposal]; *Hellman v. La Cumbre Golf & Country Club*
14 (1992) 6 Cal.App.4th 1224, 1230 [the court is not required to address each question in the parties'
15 proposals].)

16 One party would have this Court needlessly sort through volumes of expert evidence—evidence
17 accumulated over the course of the entire Phase Three trial—to identify the specific testimony that the
18 Court found "credible" in reaching its decisions on overdraft and safe yield. (Bolthouse Objection at
19 6:7-13; see also Bolthouse Objection, Exhibit A.) The detail requested from this same party, and others,
20 in its proposal on the type of material to be included in the Statement of Decision, e.g., "all facts" and
21 "specific testimony" on some 60 issues (see, generally, Bolthouse Proposal), is unfounded. Another
22 party would have this Court make findings regarding specific numerous subsidiary facts to its ultimate
23 decision regarding the Court's determination of pumping. (See, generally, AGWA Proposal.) Similar to
24 Bolthouse, AGWA asks the Court to respond to over 30 requests regarding specific testimony. (*Id.*)

25 A statement of decision is deemed adequate if it "sufficiently disposes of all the basic issues in
26 the case." (*Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118.) The Statement of Decision for this case
27 plots the analytical path traversed by this Court, disclosing the material issues in dispute at the Phase
28 Three trial (Statement of Decision at 1), the burden of proof (*id.* at 2: 4-7), the definition of overdraft

1 and safe yield (*id.* at 2:8-18), the extensive expert testimony presented at trial for overdraft and safe
2 yield (*id.* at 2:19-28), and a detailed narrative of the factual bases for finding overdraft (*id.* at 3-5) and
3 safe yield (*id.* at 5-9). A review of Cross-Defendants' Objections shows a request for disclosure of
4 subsidiary facts "remote in the chain of determination of the ultimate fact," which do not require special
5 findings, and thus were not appropriately addressed here. (*South Bay Irr. Dist. v. California-American*
6 *Water Co.* (1976) 61 Cal.App.3d 944, 994; *Kuffel, supra*, 69 Cal.App.3d at 566.) There is simply no
7 evidence that the Court failed to make findings on material issues sufficient for reversible error to result.
8 (*Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67.)

9 **B. The Court Used The Proper Burden Of Proof**

10 "[E]xcept as otherwise provided by law, the burden of proof requires proof by a preponderance
11 of the evidence." (CA Evid. Code, §115). Here, the law does not provide for a higher burden of proof
12 and the Court properly found that the burden of proof was met by a preponderance of the evidence.
13 Preponderance of the evidence results in a roughly equally sharing of risk and between all parties. (*In re*
14 *Marriage of Peters* (1997) Cal.App.4th 1487, 1490). Requiring a higher burden of proof demonstrates a
15 preference to one party over the other. (*Id.*) Thus, a higher burden of proof is generally only applied in
16 instances where the consequences of the outcome affect particularly important individual interests or
17 rights, which are more substantial than the loss of money. (*People ex rel. Monterey Mushrooms, Inc. v.*
18 *Thompson* (2006) 136 Cal.App.4th 24, 37; *Baxter Healthcare Corp. v. Denton* (2004) Cal.App.4th 333,
19 365; *Bookout v. Nielsen* (2007) 155 Cal.App.4th 1131, 1139). Here the scope of the Phase III trial was
20 safe yield and overdraft, which do not affect any one party's rights, but rather assist the Court in
21 determining the condition of the Basin. Thus, the Court correctly applied the preponderance of the
22 evidence standard.

23 **C. The Court Should Make Findings As To Native Safe Yield, Supplemental Safe Yield, and**
24 **Return Flow Percentages**

25 The proposed Statement of Decision adds findings as to the native safe yield, supplemental safe
26 yield, and return flow percentages (Statement of Decision at 8). These findings were added for three
27 reasons.
28

1 First, native safe yield, supplemental safe yield, and return flow percentages are necessary
2 components of the Court’s ultimate conclusion that the safe yield of the Basin is 110,000 acre-feet per
3 year. While the expert witnesses called by the Public Water Suppliers, City of Los Angeles, and United
4 States used different methods to come to their opinions that the natural recharge of the Basin was 60,000
5 acre-feet per year, Mr. Scalmanini then added the return flows from native and imported water to arrive
6 at his ultimate opinion that the total safe yield of the Basin was 110,000 acre-feet per year. (Scalmanini
7 Testimony 500–519.) As such, the return flow amounts and percentages are ultimate facts necessary to
8 reach the safe yield conclusion, and can be considered “principal issues.” As discussed above, a
9 “principal issue” is a material issue that “is relevant and essential to the judgment and closely related to
10 the ultimate issues in the case.” (*Kuffel v. Seaside Oil Co.* (1977) 69 Cal.App.3d 555, 565.) Further, the
11 need to use these factors in the calculation of the total safe yield means that they are not outside the
12 scope of the Phase Three trial, as some Objections have argued.

13 Second, the inclusion of findings as to native safe yield, supplemental safe yield, and return flow
14 percentages now will avoid an expensive and time-consuming retrial of those issues later. The Public
15 Water Suppliers contend that the yield attributable to return flows from imported water belongs to the
16 importers. (See *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, 262.) While water rights were
17 specifically excluded from the scope of the Phase Three trial, a finding now as to the amount of return
18 flows from imported water will enable a simple calculation of those rights later, should the Court agree
19 with the Public Water Suppliers.

20 Third, the testimony at the trial showed that while natural recharge remains relatively constant
21 over time (being itself based on a long-term average), the return flows change depending on land use
22 and irrigation practices. Findings as to return flow percentages will enable the calculation of the amounts
23 of return flows going into the future. This will be important in the implementation of the physical
24 solution as ultimately determined by the Court.

25 Copa de Oro’s objection to the finding on supplemental safe yield is based on the uncertainty of
26 State Water Project (imported) water in the future. The first response to Copa de Oro’s objection is that
27 the evidence regarding imported water return flows, and the resulting calculation of supplemental safe
28 yield and total safe yield, did not deal with the future availability of imported water at all. It was based

1 on what Mr. Scalmanini called “current conditions.” The second response is that the variability of
2 imported water in the future will be of critical importance in formulating a physical solution. In that
3 regard, it is necessary for the Court to make findings now as to return flow percentages and how those
4 enter into the calculation of supplemental safe yield, so that return flows can be calculated on a year-by-
5 year basis in the future.

6 **D. Editorial Changes to the Tentative Decision Were Made For Clarity, and Do Not Change**
7 **The Substance of the Court’s Decision**

8 The Statement of Decision reflects some changes to the terminology and wording of the
9 Tentative Decision. These changes were made for clarity and do not affect the substance of the Court’s
10 decision. For example, the term “aquifer” was changed to “Basin” to reflect the testimony at trial and to
11 avoid confusion. While the word “aquifer” is often used to describe a formation yielding groundwater to
12 wells, testimony in this case established that the Basin contained multiple aquifers. (See, e.g., RT 2/1/11,
13 48.) The Court’s decision affected the Basin as a whole, not individual aquifers within the Basin.

14 Similarly, the word “safe yield” was removed in reference to subareas, because the term “safe
15 yield” is used in the case law for basin-wide concepts such as water rights and safe yield. (Statement of
16 Decision at 7; see *Los Angeles v. San Fernando*, *supra*, 14 Cal. 3d at 278-79.) The Court correctly found
17 that similar concepts of sustainable pumping will be necessary with respect to subareas in the physical
18 solution, and the revised wording of the Statement of Decision does not change the substance of that
19 finding.

20 Finally, the word “hydro-conductivity” was changed to “hydraulic connectivity” to reflect the
21 term used in the industry and at the Phase Two trial.

22 **III. CONCLUSION**

23 For the reasons set forth above, the Court should adopt the proposed Statement of Decision.

24 Dated: July 1, 2011

LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP

25
26 By: _____
27 Thomas S. Bunn III
28 Attorneys for Defendant and Cross-Complainant
Palmdale Water District