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BIGHORN-DESERT VIEW WATER AGENCY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 17 2014

L. Hall

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RIC

12 BIGHORN MOUNTAINS WATER
AGENCY, a public entity, and DESERT
13 VIEW WATER DISTRICT, a public entity,

Case No. 211504

**STIPULATION AND [PROPOSED]
AMENDED AND RESTATED
JUDGMENT**

14 Petitioners and Plaintiffs,
15 v.

16 HI-DESERT WATER DISTRICT, a public
entity,

17 Respondent and Defendant.

18 MAINSTREAM WATER
19 DEVELOPMENT COMPANY, a California
limited partnership; MIKE V. PAGE, an
20 individual doing business as
MAINSTREAM WATER
21 DEVELOPMENT COMPANY; and DOES
1-25,

22 Real Parties in Interest.
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RIC RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

Amended and Restated Judgment

1 This Stipulated Amended and Restated Judgment is made and entered into by and
2 between Bighorn-Desert View Water Agency, Hi-Desert Water Agency, Mojave Water
3 Agency, County of San Bernardino Service Area No. 70 W-1 Landers, and County of San
4 Bernardino Service Areas No. 70 W-4 Pioneertown (singularly "Party," or collectively the
5 "Parties"), and based upon the following facts:

6 On June 3, 1991, this Court entered a Judgment ("the Judgment" hereinafter)
7 pursuant to a Stipulation for Judgment entered into by Bighorn-Desert View Water Agency
8 ("BDV" hereinafter) and Hi-Desert Water District ("Hi-Desert" hereinafter). The Judgment
9 specifically concerned Hi-Desert's proposed construction of a new production well
10 ("Mainstream Well" hereinafter) to be located in an area between Bighorn and Hi-Desert
11 service areas and more generally concerning the maintenance of an area referred to as Ames
12 Valley Water Basin as a sustained source of groundwater for the beneficial use of BDV, Hi-
13 Desert and their ratepayers. The Ames Valley Water Basin was found to consist of the
14 Pipes and Reche Subbasins. The Judgment required monitoring of the subject groundwater
15 supplies as to quantity and quality and the regulation of production from the Mainstream
16 Well subject to this Court's continuing jurisdiction.

17 Paragraph 13 of the Judgment was stricken by Order of this Court dated September
18 20, 2011.

19 Effective May 29, 2012, BDV, Hi-Desert, Mojave Water Agency ("MWA"
20 hereinafter), County of San Bernardino Service Area No. 70 W-1 Landers ("W-1"
21 hereinafter) and County of San Bernardino Service Area No. 70 W-4 Pioneertown ("W-4"
22 hereinafter) entered into an agreement providing for more comprehensive regulation of the
23 groundwater supplies protected in the Judgment, including the provision of supplemental
24 water supplies for beneficial use, the allocation of water production, storage and transfer
25 rights to all of the public entity water retailers utilizing the subject groundwater supply, and
26 continuing monitoring of water supply quantities and qualities, all subject to this Court's
27 continuing jurisdiction. All of those Parties have stipulated to this Court's entry of this
28 Amended and Restated Judgment, a motion has been filed asking the Court to do so and

1 MWA, W-1 and W-4 have moved to intervene as parties herein to receive the benefits and
2 undertake the obligations provided for herein.

3 Portions of the groundwater basin referred to in the Judgment as Ames Valley
4 Groundwater Basin now are commonly referred to as the Pipes and Reche Groundwater
5 Sub-basins and, together with that area commonly referred to as Pioneertown, form a
6 management area for purposes of this Amended and Restated Judgment that is referred to
7 herein as "the Basin." The boundaries of the Basin are generally described in Exhibit A
8 and depicted on Exhibit B hereto. The Parties hereto have conducted studies which indicate
9 that substantial portions of the Basin are likely overdrafted and that approximately 400,000
10 acre-feet or more of subsurface storage space is available in the Basin. The studies
11 conducted by the Parties have also estimated the amount of water available perennially in
12 the Basin due to natural supplies, the amount of water produced from the Basin from
13 calendar year 2004 through calendar year 2008, and the feasibility of a project by which
14 MWA would import and recharge state project water to the Basin, thereby supplementing
15 the local water supply.

16 MWA has constructed and shall maintain and operate recharge facilities ("the
17 Recharge Facilities" hereinafter) on that land leased by BDV described and depicted on
18 Exhibit C hereto at its sole cost subject to all regulatory requirements. Those facilities
19 include pipeline and ancillary structures and equipment necessary to connect the Recharge
20 Facilities to MWA's Morongo Pipeline, all as described in that BDV California
21 Environmental Quality Act document approved on June 29, 2010 and entitled "Bighorn
22 Desert View Water Agency (BDVWA) Mitigated Negative Declaration for Water
23 Infrastructure Restoration Program (WIRP): Ames/Reche Groundwater Storage and
24 Recovery Program; and Pipeline Installation/ Replacement Program and the Ames/Reche
25 Groundwater Management Plan."

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1 NOW, THEREFORE, the Parties stipulate to the Court's execution of an Amended
2 and Restated Judgment, stating as follows:

3 1. This Amended and Restated Judgment shall replace and supersede the
4 Judgment and each and every term and provision contained therein.

5 2. This Court has jurisdiction of the subject matter of this action and jurisdiction
6 over each of the Parties, i.e., the public entities having continuing rights, duties and
7 obligations under the terms and provisions of this Amended and Restated Judgment:

8 (a) Bighorn-Desert View Water Agency, a public entity organized and
9 operating pursuant to the provisions of the Bighorn Desert View Water Agency law,
10 California Water Code Appendix, Sections 112-1, *et seq.*;

11 (b) Hi-Desert Water District, a county water district organized and
12 operating pursuant to the provisions of the County Water District law, California Water
13 Code Sections 30000, *et seq.*;

14 (c) Mojave Water Agency, a public entity organized and operating
15 pursuant to the provisions of the Mojave Water Agency law, California Water Code
16 Appendix Sections 97-1, *et seq.*;

17 (d) County of San Bernardino Service Area No. 70 W-1 Landers, a public
18 entity governed by the San Bernardino County Board of Supervisors pursuant to the
19 provisions of California Government Code Sections 25210, *et seq.*; and

20 (e) County of San Bernardino Service Area No. 70 W-4 Pioneertown, a
21 public entity governed by the San Bernardino County Board of Supervisors pursuant to the
22 provisions of California Government Code Sections 25210, *et seq.*

23 3. Each Party hereto hereby is prohibited and enjoined from producing or
24 storing water in the Basin or any portion or portions thereof which is not based on
25 production and storage rights articulated in this Amended and Restated Judgment.

26 4. There hereby is established for BDV, W-1, W-4 and Hi-Desert the following
27 water production allowances ("Annual Baseline Amounts" hereinafter) based upon a
28 methodology agreed to by the Parties. The Annual Baseline Amounts are based upon 135%

Party	Annual Baseline Amount
CSA 70 .Z. W-1 (Landers)	267 Acre Feet
CSA 70 .Z. W-4 (Pioneer Town)	35 Acre Feet
Hi-Desert Water District	703 Acre Feet
Bighorn Desert View Water Agency	641 Acre Feet

Commencing upon entry of this Amended and Restated Judgment, each Party shall have the right to produce native water from the Basin in each fiscal year (July 1 - June 30) equal to its Annual Baseline Amount, prorated for any partial fiscal year on a 365 day year basis, subject to the terms and provisions hereof. Any Party withdrawing less than its Annual Baseline Amount in any fiscal year may carryover its right to produce that unproduced amount for the next two fiscal years. The first water produced at any time by any Party shall be deemed to be water credited to the Party which has been carried over for two fiscal years and the next water produced by that Party shall be deemed to be water credited to that Party which has been carried over for one fiscal year. Any Annual Baseline Amount not produced by that Party, or any transferee of that right, for more than said two fiscal years shall be deemed to be abandoned and the right to produce it knowingly and intentionally waived and relinquished. No Party or other person or entity shall have the right to produce such abandoned carryover which shall serve to provide protection against over production of Basin water. Further, the Parties have agreed and are deemed to have waived and relinquished any right they might assert to produce return flows emanating from state project water percolated into the Basin on their account through the Recharge Facilities.

25 5. Subject to the provisions of paragraph 7 and 9 hereof, BDV, W-1, W-4 and
26 Hi-Desert may purchase state project water from MWA to be percolated into the Basin at
27 the Recharge Facilities and later withdrawn from the Basin by the purchasing entity. MWA
28 shall maintain storage accounts reflecting the amount of water in storage in the Basin by

1 each other Party due to state project water percolated in the Basin on its behalf by MWA.
2 Amounts withdrawn above a Party's Annual Baseline Amount must be based on water then
3 credited in that Party's storage account. State Project water purchases are not subject to the
4 maximum two year carryover imposed on the production of Annual Baseline Amounts. No
5 Party shall produce water from the Basin not based upon either the Party's available Annual
6 Baseline Amount or water present in its storage account except pursuant to an order of the
7 Court obtained in accordance with the procedure referred to below, except pursuant to
8 adjustment of the Annual Baseline Amounts in accordance with paragraph 10 hereof. No
9 person or entity not a Party to this Amended and Restated Judgment shall store or be
10 allowed to store water in the Basin.

11 A Party may by written motion seek an order of the Court which provides that it may
12 produce water from the Basin in excess of water based upon its Annual Baseline Amount,
13 carryover rights or stored water in its account provided that the following criteria are met:

14 A. The hearing of the motion must be upon at least 90 days' written notice
15 provided to the other Parties hereto; and

16 B. At a minimum, the moving Party shall provide substantial evidence
17 demonstrating that it has exhausted all reasonably available means to meet its demands
18 based on water rights allocated hereunder, including, but not limited to, seeking in writing
19 to purchase or lease other Parties' production rights at reasonable prices.

20 6. Subject to the provisions of paragraph 7 and 9 hereof, MWA may percolate
21 state project water into the Basin for its own account for subsequent sale, production and
22 use in any location within MWA's physical boundaries so long as such activity does not
23 substantially impair or inhibit any other Party's use of the Basin as a source of water for its
24 residents and businesses.

25 7. Five percent (5%) of all State Project water percolated into the Basin at the
26 Recharge Facilities pursuant to orders from and for the banked credit of Hi-Desert, W-1 or
27 W-4 shall be credited to the BDV storage account in consideration of various efforts and
28 expenses undertaken by BDV in connection with the use of the site leased by BDV for the

1 Recharge Facilities without regard to which Party hereto other than BDV has purchased or
2 owns the right to such water when so percolated. The Parties also recognize that BDV
3 production results in return flows to the Basin to a degree substantially greater than the
4 other Parties. For example, if MWA chooses to sell the water in storage to meet its IDM
5 contractual obligations, MWA will charge the buyer only for the water credited to the
6 buyer's account (95% of original water stored) with the balance credited to the BDV
7 storage account. If a buyer requests transfer of water stored by MWA into buyers account,
8 MWA will charge the buyer for the entire amount (100% of original water stored). All
9 charges will be at the then current pricing policy of the MWA Board.

10 8. Water production rights as specified herein may be transferred from any Party
11 hereto to any other Party hereto permanently or for any delineated period of time. A
12 transfer of rights carried over by a Party as provided in paragraph 4 hereof shall not extend
13 the two year period in which those rights must be exercised.

14 9. MWA shall offer water available for storage and later extraction through the
15 Recharge Facilities to the other four Parties hereto whenever such water is made available
16 to MWA from time to time in accordance with the policies and agreements concerning
17 water allocation adopted by MWA as may be amended from time to time.

18 10. MWA shall administer a monitoring program to ensure protection of the
19 Basin as a water supply and storage facility for the Parties hereto and their end users. The
20 monitoring program will utilize the wells identified in Exhibit C hereto at a minimum. At
21 MWA's direction, additional wells may be added to or removed from the program to
22 provide a more accurate depiction of the state of the Basin as to maintenance of supplies
23 and water quality. In accordance with schedules and protocols reasonably satisfactory to
24 and approved in writing by the other Parties' general managers, the participants will take
25 groundwater level measurement and samples for quality testing. BDV, W-1, W-4 and Hi-
26 Desert agree to provide to MWA each year, no later than July 10, for the immediately prior
27 12 months (July 1 - June 30), the water level and water quality laboratory analysis collected
28 during the prior year in accordance with the approved monitoring program.

11. BDV, W-1, W-4 and Hi-Desert agree to provide to MWA each year no later than July 10, the meter readings, electrical records and any available data reflecting the production of water from the Basin from all of the entities' wells for the immediately prior 12 months (July 1 - June 30). On or before the following September 1, MWA shall provide to the other Parties a report which compiles all water production, water quality and Basin well elevation data for the immediately previous fiscal year (June 30 - July 1). Every five years, the MWA report shall make recommendations on the Parties' ability to produce their Annual Baseline Amounts commencing in the following current fiscal year and any other recommendations for actions which MWA believes are required to protect the Basin water supply based on the Ames/Reche Groundwater Management Plan. To ensure maintenance of Basin elevations at acceptable levels and still allow withdrawals and utilization of basin resources, and with the unanimous agreement of the general managers of BDV, W-1, W-4 and Hi-Desert, the Annual Baseline Amount for each such Party may be reduced or increased by the same percentage for an annual or other specified period. The first determination on such potential reduction or increase shall occur within 90 days of MWA issuing its first report required hereunder. Records of any changes to Parties' Annual Baseline Amounts made pursuant to this paragraph shall be made and maintained by MWA, and included in each annual report required hereunder, yet shall not constitute an amendment to this Agreement or the Amended and Restated Judgment, and shall not require approval by or notification to the Court.

12. Each Party shall indemnify, hold harmless and assume the defense of the other Parties, their officers, agents, employees, and elective boards, and that Party shall pay all court costs and reasonable attorneys fees relating thereto, in any action, with respect to a claim, loss, damage or injury, asserted by a third party against any Party entitled to indemnification under this Agreement, and arising out of a negligent act, error or omission, or willful misconduct, of an employee or agent of the Party whose actions under this Judgment gave rise to such third-party claim.

13. Any notice, tender or delivery to be given hereunder by any Party to another

1 Party or Parties shall be effected by personal delivery in writing or by registered or certified
2 mail, postage prepaid, return receipt requested, and shall be deemed communicated as of
3 mailing or in case of personal delivery, as of actual receipt. Mailed notices shall be
4 addressed as set forth below, but each Party may change its address by written notice in
5 accordance with this paragraph.

6 To: Hi-Desert Water District
7 55439 29 Palms Hwy.
8 Yucca Valley, CA 92284
9 Attention: General Manager

10 To: Bighorn-Desert View Water Agency
11 622 S. Jemez Trail
12 Yucca Valley, CA 92284
13 Attention: General Manager

14 To: County of San Bernardino Special District
15 County Service Area No. 70
16 12402 Industrial Blvd., Building D, Suite 6
17 Victorville, CA
18 Attention: General Manager

19 To: Mojave Water Agency
20 13846 Conference Center Drive
21 Apple Valley, CA 92307
22 Attention: General Manager

23 14. Full jurisdiction, power and authority shall be retained and reserved by the
24 Court for the purpose of enabling the Court, upon application of any Party hereto by motion
25 and upon at least thirty (30) days notice thereof, after hearing thereon, to make such further
26 or supplemental orders or directions as may be necessary or appropriate for the
27 construction, enforcement or implementation of this Amended and Restated Judgment,
28 including independent review of any decision presented to the General Managers of BDV,
W-1, W-4, Hi-Desert and MWA under paragraph 11 of this Amended and Restated
Judgment which is not unanimously approved. A responding and/or defending Party who is
determined to be a prevailing Party in any such hearing shall be entitled to recover as costs
upon the conclusion of such hearing all attorneys fees or other costs actually incurred in
connection with resolving the dispute by the making of such motion and the hearing
thereon.

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1 15. This Amended and Restated Judgment and the provisions hereof are all
2 applicable to and binding upon not only the Parties hereto, but as well upon their respective
3 successors, assigns, lessees, licensees and the agents and employees of any such persons
4 having actual or constructive notice of this Amended and Restated Judgment from the date
5 of its filing. The injunctive provisions herein contained run equally against all such
6 persons.

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8 IT IS SO STIPULATED.

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10 Dated: May 23, 2014

RICHARDS, WATSON & GERSHON

11
12 By: James L. Markman
13 JAMES L. MARKMAN
14 Attorneys for Petitioner and Plaintiff
BIGHORN-DESERT VIEW WATER
AGENCY

15 Dated: May 23, 2014

BEST, BEST & KRIEGER

16
17 By: Steven M. Anderson
18 STEVEN M. ANDERSON
19 Attorneys for Respondent and Defendant
HI-DESERT WATER DISTRICT

20 Dated: June 30, 2014

BRUNICK, McELHANEY & KENNEDY

21
22 By: Lee McElhane
23 LEE McELHANEY
24 Attorneys for Intervening Party
25 MOJAVE WATER AGENCY
26

27 [Signatures and Order continued]
28

1 Dated: June 3, 2014

SOMACH SIMMONS & DUNN

2
3 By: 

NICHOLAS A. JACOBS
Attorneys for Intervening Party
COUNTY OF SAN BERNARDINO
SERVICE AREA NO. 70 W-1 LANDERS

4
5
6 Dated: June 3, 2014

SOMACH SIMMONS & DUNN

7
8
9 By: 

NICHOLAS A. JACOBS
Attorneys for Intervening Party
COUNTY OF SAN BERNARDINO
SERVICE AREA NO. 70 W-2
PIONEERTOWN

Sharon J. Waters

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14 IT IS SO ORDERED:

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16 Dated: SEP 17 2014

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Judge of the Superior Court

PROOF OF SERVICE

I, Linda I. Pomatto, 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 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On September 4, 2014, I served the within document(s) described as:

STIPULATION AND [PROPOSED] AMENDED AND RESTATED JUDGMENT

on the interested parties in this action as stated below:

BEST, BEST & KRIEGER
Steve M. Anderson
3390 University Avenue, 5th Floor
Riverside, California 92501

SOMACH SIMMONS & DUNN
Nicholas A. Jacobs
500 Capitol Mall, Suite 1000
Sacramento, California 95814

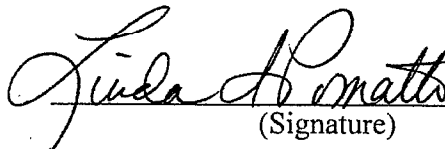
BRUNICK, MC ELHANEY & BECKETT,
DOLAN and KENNEDY
Leland McElhaney
1839 Commercenter West
P.O. Box 13130
San Bernardino, CA 92423-3130

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on September 4, 2014, at Los Angeles, California.

Linda I. Pomatto
(Type or print name)


(Signature)