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BORRÉGO WATER DISTRICT

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE

12 BORREGO WATER DISTRICT,
13
14 Plaintiff,

15 v.

16 ALL PERSONS WHO CLAIM A RIGHT TO
EXTRACT GROUNDWATER IN THE
BORREGO VALLEY GROUNDWATER
17 SUBBASIN NO. 7.024-01 WHETHER
BASED ON APPROPRIATION,
18 OVERLYING RIGHT, OR OTHER BASIS
OF RIGHT, AND/OR WHO CLAIM A
19 RIGHT TO USE OF STORAGE SPACE IN
THE SUBBASIN; et al.,

20 Defendants.
21

Case No. 37-2020-00005776
Judge: Peter J. Wilson
Dept. CX102

STIPULATED JUDGMENT

Complaint Filed: January 30, 2020
Trial Date: None Set

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INTRODUCTION AND BACKGROUND INFORMATION

1
2 **A. Judgment.** This Judgment is entered pursuant to Code of Civil Procedure sections
3 830 et seq., to comprehensively determine and adjudicate all Groundwater rights in the Borrego
4 Springs Subbasin (“Basin”) of the Borrego Valley Groundwater Basin, whether based on
5 appropriation, overlying right, prescriptive right, or other basis of right in the Basin; and to
6 provide a physical solution for the perpetual management of the Basin, which long-term
7 management will achieve Sustainable Groundwater Management for the Basin consistent with the
8 substantive objectives of the Sustainable Groundwater Management Act (“SGMA”) and with
9 reasonable and beneficial use under Article X, section 2 of the California Constitution. This
10 Judgment considered together with the Groundwater Management Plan (“GMP”) attached hereto
11 as **Exhibit “1”** constitutes the Physical Solution; provided, however, that the provisions of this
12 Judgment control over and supersede any contrary provisions contained in the GMP.

13 **B. Basin.** The Basin is located in eastern San Diego County, California and underlies
14 the unincorporated community of Borrego Springs and surrounding areas. The Basin includes
15 three management areas: the north, central and south management areas. The California
16 Department of Water Resources (“Department” or “DWR”) designated the Basin as a critically
17 overdrafted high-priority basin under SGMA.

18 **C. Stipulation for Entry of Judgment.** A substantial majority of the Parties
19 (“Stipulating Parties”), by number and by quantity of water rights herein adjudicated, stipulated
20 for entry of a judgment in substantially the form of this Judgment. The stipulation for entry of
21 judgment (“Stipulation”) is attached to this Judgment as **Exhibit “2.”**

22 **D. Pleadings.** The Complaint in this action was filed on January 30, 2020, by
23 Plaintiff, Borrego Water District (“District”), in the Superior Court for the County of San Diego,
24 seeking a comprehensive determination of Groundwater rights and adjudication of water rights in
25 the Basin pursuant to Chapter 7 (commencing with section 830) of Title 10, Part 2 of the Code of
26 Civil Procedure. BWD, together with the County of San Diego (“County”), established a GSA
27 for the Basin pursuant to SGMA in 2016. The County withdrew as a GSA, effective
28 December 31, 2019. The Stipulating Parties represent to this Court that the optimal means of

1 achieving Sustainable Groundwater Management for the Basin consistent with the directives of
2 SGMA and Article X, section 2 of the California Constitution, and to achieve a durable solution
3 to alleviate the significant Overdraft now occurring in the Basin, is by way of this Comprehensive
4 Adjudication of Groundwater rights, the substitution of the Watermaster in place of the GSA and
5 the substitution of this Judgment as an alternative to a GSP under SGMA as approved by the
6 Department and as authorized by Water Code sections 10733.6 and 10737.4. BWD filed the
7 Complaint in this action, pursuant to the Stipulation among the Stipulating Parties, to undertake
8 the Comprehensive Adjudication of Groundwater rights of the Basin pursuant to sections 830 et
9 seq. of the Code of Civil Procedure and so comply with SGMA. Upon entry of this Judgment
10 establishing the Watermaster, BWD is to withdraw as a GSA by notifying the Department under
11 Water Code section 10723.8(e).

12 **E. Notice of Commencement of Groundwater Basin Adjudication.** A Notice of
13 Commencement of Groundwater Basin Adjudication with the information required by Section
14 836 of the Code of Civil Procedure was lodged with the Court on February 4, 2020.

15 **F. Answer To Adjudication Complaint.** A draft Answer to Adjudication
16 Complaint (“Form Answer”) in the form required by Section 836 of the Code of Civil Procedure
17 was lodged with the Court on February 4, 2020.

18 **G. Court Approval of Notice & Form Answer.** BWD filed a motion pursuant to
19 section 836 of the Code of Civil Procedure, and on July 20, 2020, the Court approved the Notice
20 of Commencement of Groundwater Basin Adjudication and draft Answer to Adjudication
21 Complaint and authorized service of the landowners overlying the Basin pursuant to Section 836
22 of the Code of Civil Procedure.

23 **H. Service.** All holders of fee title to real property in the Basin were identified using
24 the assessor or assessors of the County, and served by registered mail or certified mail, return
25 receipt requested, or by other means authorized by the Court, the Notice, Complaint, and Form
26 Answer to all holders of fee title to real property in the Basin. Where the physical address of the
27 real property differed from the mailing address of the holder of fee title, the Notice, Complaint,
28 and Form Answer were mailed by registered or certified mail, return receipt requested, to the

1 physical address of the real property and the mailing address of the holder of fee title. The notice
2 was also published at least once per week for four consecutive weeks in one or more newspapers
3 of general circulation in the County on all persons interested in the proceeding, consistent with
4 Code of Civil Procedure section 835 and orders of this Court. A notice of completion of mailing
5 was filed with the Court on December 29, 2020, consistent with Code of Civil Procedure section
6 836.

7 **I. Notice.** BWD provided the Notice and Form Answer to the Department and the
8 County. The Department and County provided a link to the Notice and Form Answer on the
9 home page of their respective websites consistent with Code of Civil Procedure section 836(m).

10 **J. Parties.** All persons who hold fee simple ownership in a parcel in the Basin, or
11 Pumps or stores water in the Basin, or that claim any other right or interest in the Basin are
12 subject to the jurisdiction of the Court in this proceeding pursuant to Code of Civil Procedure
13 sections 830 et seq.

14 **K. Defaults.** Numerous Parties have failed to respond timely, or at all, to the
15 Complaint, and their defaults have been entered. The Court has given the defaulted Parties notice
16 of this Judgment and Physical Solution, together with the opportunity to be heard regarding this
17 Judgment, and hereby enters default judgments against all such Parties and incorporates those
18 default judgments into this Judgment.

19 **L. Jurisdiction.** By the pleadings herein, operation of sections 830 et seq. of the
20 California Code of Civil Procedure, and by Order of this Court, the issues have been made those
21 of an in rem adjudication of all Basin Groundwater rights as between each and all of the Parties.
22 Having complied with the notice and service requirements of Section 836 of the Code of Civil
23 Procedure, the in rem jurisdiction over all Basin Groundwater rights and the comprehensive effect
24 of this Comprehensive Adjudication have been established. This Court has jurisdiction of the
25 subject matter of this action and of the Parties herein.

26 **M. Stipulation for Entry of Judgment.** The Stipulating Parties represent a
27 substantial majority of the Pumpers, by number and by quantity of water rights defined herein.
28 The Judgment is consistent with and meets the requirements of Code of Civil Procedure section

1 850(b). The Stipulating Parties represent at least 50% percent of all Pumpers and at least 75%
2 percent of all groundwater extraction from in the Basin. The Stipulating Parties intend for this
3 Court to comprehensively adjudicate all Groundwater rights in the Basin. BWD submitted the
4 form of this Judgment, inclusive of the GMP which together constitutes the Physical Solution that
5 is established by this Judgment, to DWR for review and approval to serve as an alternative to a
6 GSP pursuant to SGMA. (Wat. Code, §§ 10733.6; 10737.4.)

7 **DECREE**

8 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:**

9 **I. DEFINITIONS AND EXHIBITS**

10 **A. Definitions.** As used in this Judgment, the following terms shall have the meaning
11 set forth below.

12 1. 2030 Target – A cumulative Basin-wide Rampdown of 50 percent by
13 Water Year 2029-2030.

14 2. Adaptive Management – Changes to Basin management based on new data
15 or improving science collected or acquired over time necessary to achieve and sustain Sustainable
16 Groundwater Management and reasonable and beneficial use of the Basin’s water resources.

17 3. Adjusted Pumping Calculation – As defined in Section IV.E.4.

18 4. AFY – Acre-feet per Water Year.

19 5. Annual Allocation – The maximum amount of Pumping allowed for a
20 Party to this Judgment in a given Water Year (excepting any Pumping of Carryover or imported
21 water if available), which for any particular Water Year will be determined by multiplying the
22 Party’s BPA by the Pumping Percentage in effect for that Water Year. Annual Allocation will be
23 rounded to the nearest whole acre-foot.

24 6. Annual Report – An annual report of Basin management and Watermaster
25 activities filed with this Court pursuant to Section IV.E(5) herein.

26 7. Basin – Borrego Springs Subbasin of the Borrego Valley Groundwater
27 Basin as defined by California Department of Water Resources (DWR) Bulletin No. 118 as
28

1 Subbasin No. 7-024.01. The boundaries of the Basin are set forth in DWR Bulletin 118, Subbasin
2 No. 7-024.01.

3 8. Baseline Pumping Allocation (BPA) – The maximum allowed Pumping
4 quantity allocated to a Party to this Judgment.

5 9. BPA Parcel(s) – The parcel(s), identified by assessor parcel numbers, to
6 which BPA is assigned, and on which Groundwater Pumped pursuant to the Annual Allocation
7 will be used.

8 10. BVHM – The Borrego Valley Hydrologic Model developed by the U.S.
9 Geological Survey using the numerical modeling code MODFLOW One-Water Hydrologic Flow
10 Model (OWHM) Version 1.0 software, which has been updated by the GSA’s consultant to
11 extend the simulation period to September 2016, and is to be periodically updated to further
12 extend the simulation periods through the processes discussed in Section III.F.

13 11. BWD – Borrego Water District.

14 12. Carryover – Any portion of a Party’s Annual Allocation not Pumped in the
15 Water Year in which it is allowed, which may be accrued and produced in future Water Years,
16 provided that the Party complies with the provisions of Section III.B herein.

17 13. CEQA – California Environmental Quality Act, California Public
18 Resources Code section 21000 et seq.

19 14. Complaint – The complaint filed in the underlying action for a
20 Comprehensive Adjudication of Groundwater rights of the Basin pursuant to the Code of Civil
21 Procedure sections 830 et seq.

22 15. Comprehensive Adjudication – An action filed in superior court to
23 comprehensively determine rights to extract groundwater in a basin. (Code Civ. Proc., § 832(c).)

24 16. County – The County of San Diego.

25 17. Cure Period – As defined in Section III.I(3).

26 18. De Minimis Pumper – Any Party who Pumps two acre-feet or less per year
27 for use on real property overlying the Basin.

28

- 1 19. “DWR” or “Department” – The California Department of Water
2 Resources.
- 3 20. Eligibility Requirement – As defined in Section III.I(2).
- 4 21. Eligibility Proof – As defined in Section III.I(2).
- 5 22. Eligibility Violation – As defined in Section III.I(3).
- 6 23. Entry Agreement – An agreement between Watermaster and a Party to
7 enter private property consistent with the form of the template agreement set forth in **Exhibit “8”**.
- 8 24. Environmental Working Group (EWG) – As defined in Section IV.H.
- 9 25. Form Answer – A draft, form Answer to Adjudication Complaint approved
10 by the Court pursuant to section 836 of the Code of Civil Procedure.
- 11 26. Fourth Five-Year Period – Water Years 2035/2036 through 2039/2040.
- 12 27. Groundwater – Water beneath the surface of the earth within the zone
13 below the water table in which the soil is completely saturated with water, but does not include
14 water that flows in known and definite channels. (Code Civ. Proc., § 832(g).)
- 15 28. Groundwater Dependent Ecosystem (GDE) – Ecological communities or
16 species that depend on Groundwater emerging from aquifers or on Groundwater occurring near
17 the ground surface. (Cal. Code Regs., tit. 23, § 351(m).)
- 18 29. Groundwater Management Plan (GMP) – The plan, attached to this
19 Judgment as **Exhibit “1,”** which, together with the Judgment, is intended to implement the
20 Physical Solution for the Basin, satisfy the substantive objectives of SGMA, and serve as an
21 alternative to a GSP under SGMA following approval by DWR, as authorized by Water Code
22 sections 10733.6 and 10737.4.
- 23 30. GSA – Groundwater Sustainability Agency as defined by Water Code
24 section 10721(j).
- 25 31. GSP – Groundwater Sustainability Plan as defined by Water Code section
26 10721(k).
- 27 32. Lease – A transfer of Annual Allocation or Carryover for one Water Year
28 or for several Water Years, as set forth in a written lease agreement.

1 33. Management Areas – The North, Central and Southern areas of the Basin,
2 as described in the GMP.

3 34. Minimum Following Standards – As defined in **Exhibit “3”**.

4 35. Max Overproduction Limit – As defined in Section III.G(2).

5 36. Original BPA Parcel – A parcel of land listed in **Exhibit “4”** to which BPA
6 was originally granted.

7 37. Overdraft – The sustained cumulative Pumping of Groundwater from the
8 Basin in quantities that exceed the Basin’s Sustainable Yield.

9 38. Overproduction – Pumping by a Party in any particular Water Year in
10 excess of the sum of the Party’s Annual Allocation and any leased Annual Allocation for that
11 Water Year plus any accrued Carryover.

12 39. Overproduction Penalty Assessment – A penalty fee for Overproduction.

13 40. Party (Parties). Any Person(s) that has (have) been named and served or
14 otherwise properly joined, or has (have) become subject to this Judgment of this Court and all
15 their respective heirs, successors-in-interest and assigns.

16 41. Parties in Disagreement – As defined in Section VII (A)(1)).

17 42. Permanent Transfer – A transfer of BPA, including any portion of a Party’s
18 total BPA, which will be permanently added to the grantee’s cumulative BPA and subtracted
19 from the grantor’s BPA, and when multiplied by the Pumping Percentage will establish additional
20 Annual Allocation of the grantee in each Water Year (less any water Pumped in that year by the
21 selling Party) and thereafter.

22 43. Person – Includes, but is not limited to, corporations, partnerships, trusts,
23 firms, counties, local agencies, state agencies, federal agencies, tribes, business entities,
24 individuals, and groups of individuals.

25 44. Physical Solution – The terms of this Judgment, including the GMP,
26 attached hereto as **Exhibit “1,”** which are intended to achieve Sustainable Groundwater
27 Management for the Basin consistent with the substantive objectives of SGMA and Article X,
28

1 section 2 of the California Constitution, and which may be modified over time in compliance with
2 the procedures described herein.

3 45. Planning and Implementation Horizon – The 50-year time period over
4 which this Court determines that the Physical Solution prescribed by this Judgment will be
5 implemented to ensure that the Basin is operated within its Sustainable Yield, consistent with
6 SGMA. (Wat. Code, § 10721(r).)

7 46. Pump – The process of extracting Groundwater from the Basin.

8 47. Pumper – Any Person who Pumps Groundwater from the Basin.

9 48. Pumping Assessment – Defined in Section IV.E(3).

10 49. Pumping Percentage – The percent of a Party’s BPA that is authorized to
11 be Pumped in any particular Water Year.

12 50. Rampdown – The reduction in cumulative authorized Pumping of BPA
13 imposed pursuant to the terms of this Judgment to alleviate the Overdraft of the Basin and
14 achieve Sustainable Groundwater Management and the reasonable and beneficial use of the
15 Basin’s water resources.

16 51. Rampdown Rate – The percentage reduction in cumulative authorized
17 Pumping of BPA effective across the Basin in any particular Water Year, which when subtracted
18 from 100 percent will determine the effective Pumping Percentage.

19 52. Second Five-Year Period – Water Years 2025/2026 through 2029/2030.

20 53. SGMA – The Sustainable Groundwater Management Act set forth at
21 California Water Code sections 10720 et seq.

22 54. State Park – The Anza Borrego Desert State Park.

23 55. Supermajority Vote – An affirmative vote of no less than four members of
24 the Watermaster Board.

25 56. Sustainable Groundwater Management – Management of the Basin and
26 Pumping and use of Groundwater from the Basin in a manner that can be maintained during the
27 Planning and Implementation Horizon without causing Undesirable Results, consistent with
28 SGMA. (Wat. Code, § 10721(v).)

1 57. Sustainable Yield – The maximum quantity of water, calculated over a
2 base period representative of long-term conditions in the Basin that can be cumulatively Pumped
3 on an annual basis from the Basin without causing an Undesirable Result, consistent with SGMA.
4 (Wat. Code, § 10721(w)).

5 58. Technical Advisory Committee – The advisory body established pursuant
6 to Section IV.G(1) of this Judgment to study technical aspects of the Basin and to issue
7 recommendations to Watermaster based on such technical study for the purpose of achieving
8 Sustainable Groundwater Management in the Basin in an effective and efficient manner,
9 consistent with the rights and obligations of the Parties established by this Judgment.

10 59. Third Five-Year Period – Water Years 2030/2031 through 2034/2035.

11 60. Undesirable Results – As defined by Water Code section 10721(x).

12 61. Water Budget – An accounting of the total Groundwater and surface water
13 entering and leaving the Basin including the changes in the amount of water stored consistent
14 with SGMA. (Wat. Code, § 10721(y).)

15 62. Watermaster – The special master to this Court appointed pursuant to
16 Section IV.A of this Judgment for the purpose of executing the powers, duties, and
17 responsibilities assigned therein.

18 63. Watermaster Board – The five-member Board governing the Watermaster
19 as defined in Section IV.B.

20 64. Watermaster Budget – The budget to fund the operation and administration
21 of the Watermaster, and programs undertaken by, or on behalf of Watermaster, which will be
22 prepared annually by Watermaster consistent with the provisions of Section IV.E(3) of this
23 Judgment.

24 65. Watermaster Rules and Regulations – The rules and regulations attached as
25 **Exhibit “5”** as may be amended from time to time by the Watermaster consistent with the terms
26 of this Judgment.

27 66. Water Rights Restrictive Covenant – As defined in Section III.I(6).

28 67. Water Year – October 1st to September 30th. (Wat. Code, § 10721(aa).)

1 **B. Exhibits.** The following exhibits are attached to this Judgment and made a part
 2 hereof.

3 **Exhibit “1”** Groundwater Management Plan

4 **Exhibit “2”** Stipulation

5 **Exhibit “3”** Minimum Flowing Standards

6 **Exhibit “4”** Baseline Pumping Allocations

7 **Exhibit “5”** Watermaster Rules and Regulations

8 **Exhibit “6”** Water Rights Restrictive Covenant Forms

9 **Exhibit “7”** Process for Selecting Watermaster Public/Community Representative,
 10 Process for Selecting Watermaster Recreational Sector Representative, and Process for Selecting
 11 Watermaster Agricultural Sector Representative

12 **Exhibit “8”** Entry Agreement Form

13 **Exhibit “9”** Facility Standards for Mutual Water Companies Formed After Entry of
 14 Judgment.

15 **C. Construction.** Unless the context clearly requires otherwise:

16 1. The plural and singular forms include the other;

17 2. “Shall,” “will,” and “must” are each mandatory;

18 3. “May” is permissive;

19 4. “Or” is not exclusive; and

20 5. “Includes” and “including” are not limiting.

21 6. Reference to any agreement, document, instrument, or report means such
 22 agreement, document, instrument or report as amended or modified and in effect from time to
 23 time in accordance with the terms thereof.

24 **II. PHYSICAL AND LEGAL SETTING**

25 **A. Complexity and Scope of Action.** The physical and legal issues of this case are
 26 complex. Pumping of those persons Pumping Groundwater from the Basin has been ascertained.
 27 In excess of 4,500 owners of land overlying the Basin have been provided notice. The
 28 Groundwater rights of the entire Basin have been brought into issue and the action has been made

1 a full in rem adjudication of water rights to the Basin as to all real property owners in the Basin
2 pursuant to Sections 830 et seq. of the Code of Civil Procedure.

3 **B. Basin as Common Source of Supply.** The area of the Basin is defined by
4 Bulletin 118 issued by the Department of Water Resources and identified by Bulletin 118 as
5 Subbasin No. 7-24.01. The Groundwater within the Basin constitutes a common source of supply
6 to the Parties herein and the Borrego Springs community.

7 **C. Overdraft and Need for Physical Solution.** The Basin has been, and presently
8 is, in a condition of long-term Overdraft for a period longer than ten years consistent with Code
9 of Civil Procedure sections 832(d) and 847(a). There is presently no viable means to cure the
10 Basin's Overdraft through artificial recharge or other supply augmentation strategy under current
11 Basin conditions and cumulative average annual Pumping quantities. Therefore, it is necessary,
12 and consistent with applicable law, to implement the Physical Solution set forth in this Judgment
13 inclusive of the prescribed Rampdown over time. The Physical Solution takes into consideration
14 the unique physical and climatic conditions of the Basin, the use of water within the Basin, the
15 character and rate of return flows, the character and extent of established uses, and the current
16 lack of availability of imported water. This Court has received evidence to support its conclusion
17 that the Physical Solution appropriately balances competing economic, social, and environmental
18 considerations, and that it will result in the optimal management of the Basin consistent with
19 Article X, section 2 of the California Constitution.

20 **D. Need for Flexibility.** The Physical Solution is intended to provide flexibility and
21 adaptability to allow this Court to use existing and future technological, social, institutional, and
22 economic options to maximize reasonable and beneficial water use in the Basin.

23 **E. Determination of Sustainable Yield.** The initial Sustainable Yield is 5,700 AFY.
24 A refined and specific estimate of the Sustainable Yield shall be determined by the Watermaster
25 by January 1, 2025, and periodically updated thereafter, through the Technical Advisory
26 Committee processes described herein based on best available science including BVHM runs and
27 consideration of all sources of Basin replenishment and outflow.
28

1 **F. Judgment as a Basis of SGMA Compliance for the Basin.** Consistent with the
2 requirements of Water Code section 10737.8, this Court finds this approach for compliance with
3 SGMA, and the comprehensive determination of all Groundwater rights within the Basin, to be a
4 prudent, legal, and durable means to achieve Sustainable Groundwater Management within the
5 Basin as intended by SGMA. This Court further finds that the Physical Solution is consistent
6 with the mandate of Article X, section 2 of the California Constitution and California water
7 policy, generally. The Judgment defines the Groundwater rights of the Basin in a manner which
8 will equitably allocate the Basin’s Groundwater supplies. Sufficient information and data are
9 known to formulate a reasonable and just allocation of existing Groundwater supplies. Such
10 Physical Solution will accelerate water-saving actions and provide flexibility and adaptability in
11 order to maximize the reasonable and beneficial use of the Basin’s Groundwater and protect
12 against undue economic harm to the Borrego Springs community.

13 **G. Pumping Groundwater Only Pursuant to Judgment.** This Judgment, and the
14 Physical Solution decreed herein, addresses all Groundwater rights of the Basin. Any Pumping
15 inconsistent with this Judgment will frustrate efforts to achieve Sustainable Groundwater
16 Management and public, environmental, and economic interests in the Basin, injure the rights of
17 all Parties, and interfere with the Physical Solution. Therefore, each and every Party, its officers,
18 agents, employees, successors, and assigns, is enjoined and restrained from Pumping
19 Groundwater from the Basin except pursuant to the provisions of this Judgment. Should
20 Watermaster become aware of any unauthorized Pumping, it shall promptly bring a motion before
21 this Court to enforce the terms of this Judgment pursuant to Section IV.E(9).

22 **III. DECLARATION OF RIGHTS AND OBLIGATIONS**

23 **A. Pumping Rights.** The BPA of each Party is as set forth in **Exhibit “4.”** **Exhibit**
24 **“4”** also identifies the legal parcel(s) to which the BPA attaches (excepting the BWD and mutual
25 water companies) and the well(s) to which the BPA is assigned.

26 If BPA is transferred to one or more new BPA Parcels and wells pursuant to a Permanent
27 Transfer, Watermaster will update **Exhibit “4”** to identify the reallocated BPA to each Party to
28 the transfer, new BPA Parcel(s) and well(s) (excepting the BWD and mutual water companies

1 with respect to BPA Parcel) to which the BPA is assigned and include an updated version of
2 **Exhibit “4”** as an attachment to its Annual Report. No Party may commence Pumping
3 Groundwater pursuant to BPA following October 1, 2020, until and unless (i) the Party has paid
4 the full assessment assessed by Watermaster to fund the Watermaster through the first permanent
5 Pumping Assessment in December 2021, and (ii) the Party is compliant with all orders of the
6 Court, including without limitation, payment of all assessments or other monies owed to
7 Watermaster or any other Party(ies) pursuant to order of the Court.

8 The BPA represents the allowed total annual Pumping by each Party prior to the
9 commencement of the 2020-2021 Water Year. The BPA will be subject to the Rampdown
10 commencing with the 2020-2021 Water Year. Through operation of Rampdown and the resulting
11 Pumping Percentage then in effect, each Party’s allowed Pumping for each Water Year will be
12 limited to a percentage of their BPA as reflected within their Annual Allocation. Pumping of
13 Groundwater used to fight fires shall be exempt from Pumping limitations and associated
14 assessments.

15 All water credits issued by BWD and/or the County pursuant to the BWD’s Demand
16 Offset Mitigation Water Credits Policy (revised May 19, 2015) have been converted to BPA and
17 are included in **Exhibit “4”**, unless otherwise agreed to by the water credit holder and BWD and
18 approved by the Court. To the extent a former water credit holder no longer owns real property
19 overlying the Basin at the time of this Judgment, the associated BPA is held in abeyance, in the
20 name of such owner until the BPA is attached to a specific legal parcel pursuant to the Judgment.

21 The basis for the amount of each Party’s BPA set forth in **Exhibit “4”** to the Judgment is
22 as follows: (i) for the BWD, a compromise amount agreed upon among the Parties that is based
23 on metered data and water credit conversion; (ii) for Parties that previously held water credits
24 pursuant to the BWD’s Demand Offset Mitigation Water Credits Policy (revised May 19, 2015),
25 the amount of BPA calculated based on a conversion factor taking into account water credit
26 type, formerly irrigated acreage, and relevant crop types of the formerly irrigated agricultural
27 acreage; and (iii) for all other Parties granted BPA, the amount of BPA specified in a final letter
28 addressed to each Party from Jim Bennett, Water Resources Manager for the County’s Planning

1 and Development Services, which the GSA intended to allocate to each of those Parties pursuant
2 to the previously anticipated GSP and that is based on metered data or irrigated acreage calculated
3 by the GSA for relevant crop types.¹ This Court acknowledges that the individual BPA
4 established for each Party reflects the settlement and compromise of the Parties respecting water
5 rights among them subject to the terms of this Judgment. Such water rights are a form of property
6 right, subject to rights and restrictions pursuant to the reasonable and beneficial use doctrine set
7 forth in Article X, section 2 of the California Constitution. The allocation of BPA among the
8 Parties reflects a compromise of all water rights of all Parties to this action, which the Court finds
9 to be equitable and consistent with applicable law, including but not limited to Article X, section
10 2 of the California Constitution. All BPA are of equal priority.

11 It is therefore consistent with constitutional protections afforded to the Parties,
12 California's common law, and the interest of legal certainty that the BPA adjudicated cannot be
13 adjusted following the entry of this Judgment. Sustainable Groundwater Management of the
14 Basin will be achieved through the Physical Solution prescribed herein inclusive of the necessary
15 Rampdown to alleviate the current Overdraft.

16 **B. Carryover.** Unused Annual Allocation may be carried over for use in subsequent
17 Water Years as Carryover if the Pumping Assessment is paid in the current year, subject to
18 restrictions on the amount or duration of Carryover specified below. The initial maximum
19 quantity of Carryover that a Pumper can accrue is two times the amount of BPA then held by that
20 Pumper. Carryover will be re-evaluated by January 1, 2025, by Watermaster, with consultation
21 of the Technical Advisory Committee. If Watermaster determines that it is necessary to adjust
22 the amount of individual Carryover or the duration that Carryover may be held within the Basin
23 to prevent Undesirable Results, the Watermaster shall so advise this Court through a noticed
24 motion for a subsequent order amending this Judgment. Once Carryover is accrued pursuant to
25 rules then in effect, the rules may not be changed as to the accrued Carryover (e.g., the rate or
26 amount of loss may not be modified) because the Groundwater reflected in Carryover is treated,

27 _____
28 ¹Certain Parties are granted BPA based on such County of San Diego letters and based on
previously-held water credits. In those circumstances, the amount of the Party's BPA specified in
Exhibit 4 reflects a combination of the BPA resulting from both bases.

1 for purposes of Basin-wide production accounting, as if already Pumped and used. Accordingly,
2 any Basin-wide need for reduced Pumping will be achieved through additional Rampdown of
3 BPA rather than reduction of a Pumper's existing Carryover.

4 **C. Technical Approach to Basin Management.** The Physical Solution, including
5 this Judgment and the GMP attached as **Exhibit "1,"** will serve as the technical approach for
6 Basin management, subject to modification as appropriate for Adaptive Management by order of
7 this Court pursuant to this Court's continuing jurisdiction under Section VII, including periodic
8 updates of Sustainable Yield through the processes described herein.

9 **D. Rights of State Park and Borrego Elementary School.**

10 1. In lieu of a grant of BPA to the State Park, the State Park will be authorized
11 to Pump an annual maximum of 20 acre-feet of Groundwater for their uses. Such authorization is
12 distinct from the Pumping rights of other Pumpers pursuant to BPA. The State Park's authorized
13 Pumping pursuant to this Section III.D shall not be subject to Rampdown, and also shall not be
14 eligible for Carryover, Lease, or subsequent transfer, and will be subject to all other relevant
15 provisions of this Judgment including but not limited to payment of an assessment on each acre-
16 foot of water pumped that is equivalent to the Pumping Assessments charged to Party's Pumping
17 BPA, consistent with Section IV.E(4).

18 2. In lieu of a grant of BPA to Borrego Elementary School, the Borrego
19 Springs Unified School District will be authorized to Pump an annual maximum of 22 acre-feet of
20 Groundwater for exclusive use at Borrego Elementary School. Such authorization is distinct from
21 the Pumping rights of other Pumpers pursuant to BPA. Borrego Springs Unified School
22 District's authorized Pumping pursuant to this Section III.D shall not be subject to Rampdown,
23 and also shall not be eligible for Carryover, Lease, or subsequent transfer, and will be subject to
24 all other relevant provisions of this Judgment including but not limited to payment of an
25 assessment on each acre-foot of water pumped that is equivalent to the Pumping Assessments
26 charged to Party's Pumping BPA, consistent with Section IV.E(4).

27
28

1 **E. Initial Rampdown.** The Rampdown schedule through the 2024-2025 Water Year
2 is as follows:

3 <u>Water Year</u>	4 <u>Annual Rampdown Schedule</u>	5 <u>Cumulative Rampdown</u>
6 2020-2021	7 5% reduction of BPA	8 5%
9 2021-2022	10 5% reduction of BPA	11 10%
12 2022-2023	13 5% reduction of BPA	14 15%
15 2023-2024	16 5% reduction of BPA	17 20%
18 2024-2025	19 5% reduction of BPA	20 25%

9 **F. Process for Determining Sustainable Yield and Implementation of**
10 **Subsequent Rampdown.** The amount and pace of Rampdown for the Water Years following the
11 2024-2025 Water Year (i.e., commencing with the 2025-2026 Water Year) will be determined
12 through the following process:

13 1. By June 1, 2021, the Watermaster shall seek agreement with the Technical
14 Advisory Committee on a scope of work and budget for technical work through September 30,
15 2023. Any disputes as to scope or budget will be resolved on hearing and order pursuant to
16 Section VII prior to the commencement of the Water Year beginning October 1, 2021. The
17 choice to perform specific technical tasks will be informed by considering the value and
18 importance of the work to attain a better understanding of the Basin and the goal of advancing
19 Sustainable Groundwater Management in comparison to the cost of the work.

20 2. During the first four Water Years (2020-2021 to 2023-2024), the
21 Watermaster will collect additional data and refine the BVHM, using model runs to update the
22 determination of Sustainable Yield in collaboration with the Technical Advisory Committee.

23 3. By January 1, 2025, the Watermaster will, following receipt of input and
24 recommendations from the Technical Advisory Committee, revise the determination of
25 Sustainable Yield for Water Years 2025/2026 through 2029/2030 (the “Second Five-Year
26 Period”). The revised determination of Sustainable Yield will consider all sources of
27 replenishment, including return flows and underflows, and all outflows from the Basin, and will
28 consider, among other data, information derived from updated runs of the BVHM. Any

1 disagreement with Watermaster’s determination may be appealed to this Court for review, subject
2 to the provisions of Section VII. The revised estimate of Sustainable Yield will determine the
3 Rampdown Rate for the Second Five-Year Period as provided in Section III.F.5 of this Judgment.

4 4. If the revised estimate of Sustainable Yield remains at 5,700, AFY the
5 Rampdown rate will continue at five percent per year for the Second Five-Year Period, thus
6 achieving a cumulative Basin-wide Rampdown of 50 percent by Water Year 2029-2030 (“2030
7 Target”).

8 5. If the revised estimate of Sustainable Yield for the Second Five-Year
9 Period exceeds or falls below 5,700 AFY, the Rampdown Rate will be reduced or increased, and
10 the 2030 Target will be increased or reduced, proportional to the percentage that the revised
11 estimate of Sustainable Yield exceeds or falls below 5,700 AFY, thus achieving a cumulative
12 quantity of all Pumpers’ Annual Allocation equal to the mid-point between the revised estimate
13 of Sustainable Yield and the cumulative quantity of all Pumper’s BPA by Water Year 2029-2030.

14 6. By January 1, 2025, the Watermaster will also determine a scope of work
15 and budget for further technical work through September 30, 2029. Any disagreement with
16 Watermaster’s determination may be appealed to this Court for review, subject to the provisions
17 of Section VII.

18 7. By January 1, 2030, the Watermaster will, following receipt of input and
19 recommendations from the Technical Advisory Committee, determine the revised estimate of
20 Sustainable Yield for Water Years 2030/2031 through 2034/2035 (the “Third Five-Year Period”).
21 The revised determination of Sustainable Yield will consider all sources of replenishment,
22 including return flows and underflows, and all outflows from the Basin, and will consider, among
23 other data, information derived from updated runs of the BVHM. Any disagreement with
24 Watermaster’s determination may be appealed to this Court for review, subject to the provisions
25 of Section VII. The revised estimate of Sustainable Yield will determine the Rampdown Rate for
26 the Third Five-Year Period as described in Section III.F(8) of this Judgment.

27 8. The annual Rampdown Rate for each Water Year of the Third Five-Year
28 Period will be calculated to reduce the then cumulative allowed Pumping (i.e., cumulative Annual

1 Allocation in effect for Water Year 2029-2030) over 10 years to equal the revised determination
2 of Sustainable Yield by Water Year 2039-2040. Thus, the annual Rampdown Rate will be
3 established by dividing the necessary ten-year cumulative Rampdown by ten.

4 9. By January 1, 2030, the Watermaster will also determine a scope of work
5 and budget for further technical work through September 30, 2034. Any disagreement with
6 Watermaster's determination may be appealed to this Court for review, subject to the provisions
7 of Section VII.

8 10. By January 1, 2035, the Watermaster will, following receipt of input and
9 recommendations from the Technical Advisory Committee, determine the revised estimate of
10 Sustainable Yield for Water Years 2035/2036 through 2039/2040 (the "Fourth Five-Year
11 Period"). The revised determination of Sustainable Yield will consider all sources of
12 replenishment, including return flows and underflows, and all outflows from the Basin, and will
13 consider, among other data, information derived from updated runs of the BVHM. Any
14 disagreement with Watermaster's determination may be appealed to this Court for review, subject
15 to the provisions of Section VII(A). The revised estimate of Sustainable Yield will determine the
16 Rampdown Rate for the Fourth Five-Year Period as described in Section III.F(11) of this
17 Judgment.

18 11. The annual Rampdown Rate for each Water Year of the Fourth Five-Year
19 Period will be calculated to reduce the then cumulative allowed Pumping (i.e., cumulative Annual
20 Allocation in effect for Water Year 2034-2035) over five years to equal the revised determination
21 of Sustainable Yield by Water Year 2039-2040. Thus, the annual Rampdown Rate will be
22 established by dividing the necessary five-year cumulative Rampdown by five.

23 12. Notwithstanding the Rampdown schedule described herein, this Court,
24 pursuant to motion of any Party or sua sponte, may adjust the rate of Rampdown up or down for
25 any 5-year period or subdivision thereof, upon a finding that an adjustment to the Rampdown
26 Rate is appropriate, and taking into account the limitations on Pumping necessary to avoid an
27 Undesirable Result.

28

1 **G. Overproduction.** This Court finds that it is appropriate to afford (i) reasonable
2 time and accommodation to allow the Parties to adjust to the initiation of Pumping limitations
3 under this Judgment during the initial Water Years, and (ii) reasonable flexibility to allow a Party
4 that has overproduced its Annual Allocation in a particular Water Year to cover the
5 Overproduction during the next Water Year. Therefore, the following Overproduction rules
6 apply:

7 1. Overproduction up to the Max Overproduction Limit (defined below), must
8 be covered within one year of the Overproduction, either by using less allocation (under-Pumping
9 the allowed Annual Allocation or applying Carryover) in the subsequent Water Year or by Lease
10 or Permanent Transfer from another Party. If not covered by under-Pumping, Carryover, Lease,
11 or Permanent Transfer in the subsequent Water Year, the Party will be assessed an
12 Overproduction Penalty Assessment. In calculating Overproduction, any Carryover will be
13 applied first to the Party's production, then any Groundwater Pumped pursuant to a Lease, and
14 then the Party's Annual Allocation, so that Overproduction does not occur until the Party has
15 exceeded the sum of its Carryover, Leased Annual Allocation/Carryover, and its Annual
16 Allocation. The first Groundwater produced by a Party during any Water Year will be deemed to
17 be an exercise of any Carryover.

18 2. During the first three Water Years (2020-2021 through 2022-2023; Water
19 Years 1-3), no Party will be subject to an immediate Overproduction Penalty Assessment so long
20 as such Party's total cumulative Overproduction in those Water Years does not exceed 20 percent
21 of the Party's total cumulative Annual Allocation for those Water Years ("Max Overproduction
22 Limit"). Any Party that engages in Overproduction in any of Water Years 1-3 that does not
23 exceed the Max Overproduction Limit will be notified by the Watermaster of the amount of
24 Overproduction annually during Water Years 1-3 following the end of Water Year. The Party
25 engaging in Overproduction shall cover the cumulative quantity of its Overproduction occurring
26 in Water Years 1-3 by the end of Water Year 5 (2024-2025) through either Carryover, reduced
27 production below authorized Annual Allocation in Water Years 4 (2023-2024) and 5 (2024-
28 2025), or through Lease or Permanent Transfer. If the Party has not covered its Overproduction

1 from Water Years 1-3 by the end of Water Year 5 (September 30, 2025), an Overproduction
2 Penalty Assessment will be assessed.

3 3. Any Party that engages in Overproduction in any of Water Years 1-3 that
4 does exceed the Max Overproduction Limit will be assessed an Overproduction Penalty
5 Assessment for the Overproduction in excess of the Max Overproduction Limit unless such
6 Overproduction in excess of the Max Overproduction Limit is covered and cured through under-
7 Pumping, Carryover, Lease, or Permanent Transfer for all such Overproduction during the
8 subsequent Water Year.

9 4. The Watermaster has the authority to enforce the terms of this Judgment,
10 including the Rules and Regulations and Physical Solution, which authority includes at a
11 minimum, the enforcement authority granted to a GSA under Water Code section 10732.
12 Notwithstanding the monetary limits in Water Code section 10732(a)(1), the Watermaster has
13 authority to establish an Overproduction Penalty Assessment, which will be no less than \$500 per
14 acre-foot. All Overproduction Penalty Assessments will be used by Watermaster to fund either
15 (i) acquisition of Annual Allocation to offset the Overproduction or (ii) its Watermaster Budget
16 and thereby reduce the amount of funds that must be raised from the annual Pumping
17 Assessment. Failure to pay the Overproduction Penalty Assessments will incur further
18 enforcement terms, as permitted by law, including but not limited to the right of the Watermaster
19 to seek injunctive relief and the right to lien real property for unpaid assessments.

20 **H. De Minimis Pumpers.** This Court finds that production of Groundwater by any
21 person or entity owning real property overlying the Basin who is a De Minimis Pumper at the
22 time of filing of the Complaint is not likely to significantly contribute to Undesirable Results to
23 the Basin or any interest related to the Basin. Accordingly, this Judgment is not intended to
24 regulate a Party that was Pumping Groundwater as a De Minimis Pumper at the time of filing of
25 the Complaint, provided the Pumping by such De Minimis Pumper remains within the two acre
26 foot limitations established in this Judgment and provided that such De Minimis Pumper does not
27 seek to transfer their Pumping to another real property owned by another Person. All persons
28 who are not Pumping as of the date of filing the Complaint who seek to initiate Pumping as a De

1 Minimis Pumper in the future shall submit an application to the Watermaster and the Watermaster
 2 shall determine whether the proposed Pumping will contribute to or threaten to contribute to
 3 Undesirable Results or other interest related to the Basin, and the application shall be denied if it
 4 contributes to or threatens to contribute to Undesirable Results or other interest related to the
 5 Basin. Any such Watermaster determination may be appealed to the Court pursuant to the
 6 procedures described in Section VII, below. Notwithstanding any of the provisions of this
 7 Section III(H), to the extent this Court determines in the future that Pumping by De Minimis
 8 Pumpers has significantly contributed to or threatens to significantly contribute to Undesirable
 9 Results, this Court may regulate Pumping by De Minimis Pumpers as it deems prudent pursuant
 10 to its reserved jurisdiction provided in Section VII.

11 **I. BPA Transfer.** In the interest of advancing the effective and efficient
 12 management of the Basin and the policy of maximizing the beneficial use of the Basin's
 13 Groundwater, consistent with Article X, section 2 of the California Constitution, all BPA may be
 14 Permanently Transferred or Leased, subject to the provisions of this Section III.I. Unless
 15 otherwise noted, all provisions within this Section III.I will be applicable to both Permanent
 16 Transfers and Leases, provided that the assignment of BPA to a BPA Parcel(s), or in the case of
 17 the BWD or a mutual water company, their respective service area boundaries, including any
 18 future modifications thereto, will not constrain the Lease of such BPA for use elsewhere in the
 19 Basin consistent with the other provisions of this Section III.I.²

20 1. **Good Standing and Intervention Requirements.** Permanent Transfers and
 21 Leases may only be completed in accordance with these rules by Parties to this Judgment
 22 (including without limitation those Persons that have become subject to this Judgment by virtue
 23 of having been named and served with the Complaint) in good standing (meaning both grantee
 24 and grantor have paid all applicable Pump assessments, fees, charges or will do so prior to
 25 completion of the transfer, and are otherwise in compliance with this Judgment). A transferee
 26

27 ² The County may in the future purchase BPA for the purpose of subsequently transferring it to
 28 parcels to facilitate discretionary project approvals within the County's land use jurisdiction. If
 the County does initiate such purchases, then all provisions of this Section III.I applicable to the
 BWD or a mutual water company will apply to the County.

1 who is not already a Party must intervene as a Party as a condition of completing any Lease or
2 Permanent Transfer.

3 2. Anti-Speculation Provision. A grantee of BPA pursuant to a Permanent
4 Transfer must own at least one acre overlying the Basin for every five acre-feet of BPA
5 transferred to the grantee, or, if the grantee of BPA is a mutual water company that exists now or
6 in the future to serve parcel(s) with existing or later-acquired County land use entitlements, then
7 the mutual water company must own no more BPA than the amount that is reasonably required to
8 satisfy the demands of the land use entitlements to be served by such mutual water company
9 taking into consideration future reductions of Annual Allocation (the “Eligibility Requirement”).
10 The “Anti-Speculation” and Eligibility Requirement provisions of this section do not apply to: (a)
11 BWD; and (b) an owner of an Original BPA Parcel so long as either (i) the Original BPA Parcel
12 owner retains the same or greater quantity of acreage in proportion to its originally granted BPA
13 or (ii) the Original BPA Parcel owner does not hold an amount of Annual Allocation in excess of
14 the quantity of its originally granted BPA; and (c) Borrego Air Ranch Mutual Water &
15 Improvement Co. (“Borrego Air Ranch”), the only mutual water company overlying the Basin
16 allocated BPA in Exhibit “4” as of the date of entry of this Judgment, provided that Borrego Air
17 Ranch does not own more BPA than the amount that is reasonably required to satisfy the
18 demands of all legal lots within its service area shown on the Attachment to Exhibit “4” to this
19 Judgment taking into consideration future reductions of Annual Allocation.

20 a. As a condition of completing a Permanent Transfer, the
21 Watermaster may demand that a BPA grantee (excepting BWD, Borrego Air Ranch satisfying the
22 criteria specified above, and an owner of an Original BPA Parcel satisfying the criteria specified
23 above) (i) submit a deed reflecting the grantee’s ownership in fee duly recorded, or Court order
24 evidencing ownership by the grantee, of a legal parcel or parcels overlying the Basin of sufficient
25 acreage to satisfy the Eligibility Requirement, or (ii) in the case where a BPA grantee is a mutual
26 water company formed after the date of entry of this Judgment, submit a copy of the County
27 ordinance, County zoning letter(s), and such other documentation reasonably required by the
28

1 Watermaster to verify water demands for County approved land use entitlements of sufficient
2 quantity to meet the Eligibility Requirement (the “Eligibility Proof”).

3 b. For purposes of establishing the Eligibility Proof, a grantee may
4 show the requisite ownership of a legal parcel or parcels overlying the Basin to satisfy the
5 Eligibility Requirement held in the name of the grantee, a subsidiary of the grantee where the
6 grantee possesses at least a 51% ownership interest, or an affiliate of the grantee that has at least
7 51% common ownership with the grantee.

8 3. Eligibility Violation. In the event that the Watermaster determines that a
9 grantee has not satisfied the Eligibility Requirement (an “Eligibility Violation”), the Watermaster
10 will provide written notice of such Eligibility Violation to the grantee and such written notice will
11 specify a period of not more than one year to cure such Eligibility Violation (“Cure Period”). To
12 thereafter cure such Eligibility Violation, the grantee must submit the Eligibility Proof within the
13 Cure Period. If the grantee fails to so cure the Eligibility Violation within the Cure Period, the
14 BPA or that portion of the BPA to be transferred which is in excess of the Eligibility Requirement
15 following the end of the Cure Period, whichever quantity is less, will be returned to the grantor if
16 required by the terms of the Permanent Transfer, or else forfeited by the grantee and such BPA
17 will be permanently retired for the benefit of the Basin as a whole. No forfeiture of BPA or any
18 portion thereof will be valid except by order of this Court upon noticed motion and after hearing.

19 4. Transfer Records. Upon completion of the Permanent Transfer, the BPA
20 transferred will be assigned to the grantee’s BPA Parcel(s) on the records of the Watermaster and
21 removed from the grantor’s BPA Parcel(s) on the records of the Watermaster. Notwithstanding
22 the foregoing, upon completion of the Permanent Transfer to BWD or a mutual water company,
23 the BPA will be assigned on the records of the Watermaster to BWD or the mutual water
24 company, as applicable, and such BPA will be assigned for use within the service area
25 boundaries, including any future modifications thereto, of such entity.

26 5. Restrictions on Transfers. In order to protect the Basin and protect against
27 Undesirable Results, the Watermaster, with input from the Technical Advisory Committee, may
28 restrict Permanent Transfers and Leases to specific areas of the Basin based on reasonable,

1 evidenced-based concern that the Permanent Transfer or Lease will cause or exacerbate
2 Undesirable Results, and then only in a manner that is equitable to all affected Pumpers.

3 6. Permanent BPA Transfers with Land Conveyances.

4 a. BPA Parcels may be conveyed in full or in portions. With respect
5 to a conveyance of a fee interest to all of a BPA Parcel, the associated BPA will automatically
6 transfer to the successor of said BPA Parcel unless the grantor expressly retains BPA by meeting
7 the following conditions: (i) the deed, or comparable instrument, conveying such full BPA Parcel
8 expressly excludes all or a portion of the BPA from the conveyance, and specifies the quantity of
9 the applicable BPA that is retained by the grantor and the quantity, if any, that is conveyed with
10 the BPA Parcel to grantee; (ii) the grantor records a water rights restrictive covenant on the BPA
11 Parcel being conveyed with the San Diego County Recorder in a form substantially similar to the
12 applicable example provided in Exhibit “6” to this Judgment (“Water Rights Restrictive
13 Covenant”) specifying the quantity of the applicable BPA that was retained by the grantor and the
14 quantity, if any, that was conveyed with the BPA Parcel to grantee; and (iii) within ten (10)
15 business days of closing, grantor delivers via email and USPS (or other nationally-recognized
16 carrier) a copy of the recorded Water Rights Restrictive Covenant to the Watermaster and
17 identifies in writing to Watermaster the parcel(s) and well number(s) to which the BPA will
18 attach. The conveyed parcel will thereafter only be benefited by any residual BPA not retained
19 by the grantor, and if all BPA is retained by the grantor, the conveyed parcel will cease to be
20 benefited by BPA, and thus will no longer be a BPA Parcel, unless BPA is subsequently acquired
21 and designated for the benefit of such parcel through a Lease or Permanent Transfer.

22 b. With respect to a conveyance of a fee interest to a portion of a BPA
23 Parcel, the grantor shall: (i) specify in the deed, or comparable instrument, conveying such
24 portion of the BPA Parcel, the quantity of the applicable BPA retained by the grantor, if any, and
25 the quantity that is conveyed with the portion of the BPA Parcel to grantee, if any; (ii) if any
26 portion of the applicable BPA is conveyed with the portion of the BPA Parcel to grantee, record a
27 Water Rights Restrictive Covenant against both the portion of the BPA Parcel conveyed to the
28 grantee and the portion of the BPA Parcel retained by the grantor, with each Water Rights

1 Restrictive Covenant specifying the amount of the applicable BPA conveyed, or retained, by each
2 parcel; (iii) if no portion of the applicable BPA is conveyed with the portion of the BPA Parcel to
3 grantee, record a Water Rights Restrictive Covenant against only the portion of the BPA Parcel
4 conveyed to the grantee specifying that none of the applicable BPA was conveyed to the parcel;
5 and (iv) within ten (10) business days of closing, deliver via email and USPS (or other nationally-
6 recognized carrier) a copy of the recorded Water Rights Restrictive Covenant(s) to the
7 Watermaster and identify in writing to Watermaster the parcel(s) and well number(s) to which the
8 BPA attaches with respect to the parcel(s) conveyed to grantee and the parcel(s) retained by
9 grantor.

10 c. All Water Rights Restrictive Covenants must include a covenant
11 prohibiting the future Pumping of Groundwater from the parcel upon which the Water Rights
12 Restrictive Covenant is recorded in excess of the amount of BPA specified in the Water Rights
13 Restrictive Covenant as conveyed or retained, as applicable, to such parcel, unless BPA is
14 subsequently acquired for the benefit of that parcel.

15 7. Compliance with Watermaster Review for Permanent Transfers. Except
16 for a Permanent Transfer of BPA concurrently with the transfer of a BPA Parcel or a Permanent
17 Transfer of a Party's BPA to other overlying parcels owned by that Party or its affiliates, all
18 Permanent Transfers must be reviewed and approved by Watermaster prior to closing to consider
19 the means by which Groundwater use will be permanently reduced to facilitate the Permanent
20 Transfer of BPA and to confirm satisfaction of the Eligibility Requirements (Sections III.I(2)
21 above).

22 8. Permanent Transfer of BPA Separate from Parcel Transfer. If a Party's
23 BPA is Permanently Transferred from a BPA Parcel separately from a conveyance of a fee
24 interest to the BPA Parcel, for the Permanent Transfer to become effective, (i) the Parties to the
25 Permanent Transfer must comply with the following standards set forth in **Exhibit "3"** and (ii)
26 except for a conveyance of a portion of the applicable BPA to the BWD or a mutual water
27 company as a condition of obtaining water service, the grantor must record a Water Rights
28 Restrictive Covenant against the BPA Parcel with the San Diego County Recorder and

1 subsequently deliver a copy of the recorded Water Rights Restrictive Covenant to the
2 Watermaster. The Water Rights Restrictive Covenant must specify the amount of BPA
3 transferred from the BPA Parcel, include a covenant prohibiting future Pumping from the parcel
4 from which the BPA is transferred inconsistent with the Permanent Transfer or the terms of this
5 Judgment, and identify the parcel(s) and wells(s) to which the transferred BPA is to be assigned.
6 If all BPA is transferred from the parcel, as specified in the Water Rights Restrictive Covenant,
7 the parcel will cease to be benefited by BPA, and thus will no longer be a BPA Parcel, unless
8 BPA is subsequently acquired and designated for the benefit of such parcel through a Lease or
9 Permanent Transfer.

10 9. Required Notices to Watermaster.

11 a. Leases. A Lease will only be effective after a written notice has
12 been received by Watermaster, signed by both Parties to the Lease, specifying the amount of
13 Annual Allocation leased, the term of the Lease, the well(s) to which the BPA is assigned during
14 the term of the Lease, the Party responsible for payment of applicable Pumping Assessments, and
15 if the BPA is then benefitted by Carryover, the amount of any Carryover leased to the lessee as a
16 component of the Lease. If the Lease is for one or more Water Years other than the then-current
17 Water Year, the notice will specify the BPA that correlates to the Lease in the future Water Years
18 subject to the Lease (i.e., all Water Years subject to the Lease other than the current Water Year),
19 and the amount of the Lease of Annual Allocation for such future Water Years will be determined
20 by multiplying the amount of BPA to which the Lease correlates by the Pumping Percentage
21 applicable to each of the future Water Years during the Lease.

22 b. Permanent Transfers. A Permanent Transfer will only be effective
23 after a written notice has been received by Watermaster, signed by both Parties to the Permanent
24 Transfer, specifying the amount of BPA permanently transferred; the new BPA Parcel and well(s)
25 to which the transferred BPA is to be assigned (excepting the BWD and mutual water companies
26 with respect to BPA Parcel); and certifying that the conditions in Sections 6 and 7 above have
27 been satisfied; and, except for a transfer of BPA concurrently with the transfer of fee title to an
28 Original BPA Parcel or a transfer of a Party's BPA to other overlying parcels owned by that Party

1 (see Subsection D.5), no Permanent Transfer will be effective until the grantor has obtained
2 approval from Watermaster for the transfer of the BPA following Watermaster review. If the
3 BPA grantor fails to deliver the required Permanent Transfer documents to the Watermaster in
4 accordance with, and at the time specified in this Subsection III.I, the BPA grantor and BPA
5 grantee shall be jointly and severally liable for the payment to Watermaster of all assessments,
6 including any unpaid Pumping Assessment and any Overproduction Penalty Assessment, together
7 with applicable interest and penalties relating to any delinquent assessment, through the date of
8 delivery of the Permanent Transfer documents to the Watermaster, as well as for any costs of suit,
9 attorneys' fees and reasonable costs of collection, which may include obtaining a lien on the BPA
10 Parcel (including any portion conveyed or retained), as prescribed by this Judgment.
11 Watermaster may elect to pursue recovery of amounts owed pursuant to this III.I.9 against
12 grantor, grantee, or both and against BPA Parcel(s) held by grantor and grantee.

13 c. Transfers of BPA Excluded from Conveyance of Parcel. Upon
14 written notice to the Watermaster, a Party may transfer all or any portion of that Party's BPA
15 excluded from the conveyance in accordance with Section III.I(9)(b) to any other parcel or
16 portion thereof overlying the Basin owned by that Party or its affiliate provided that such notice
17 identifies the BPA Parcel(s) and well(s) to which the BPA is to be assigned.

18 10. Transfer Costs. All costs of transfers (including costs of any fallowing
19 remediation) will be borne by the Parties to the transfer transaction, not by Pumping Assessments.
20 Likewise, enforcement costs will be borne by the Parties to the transfer with the ability for the
21 prevailing party to recoup its legal costs from the non-prevailing party. If the Watermaster is the
22 prevailing party in a Watermaster enforcement action, the Watermaster may recoup its legal costs
23 from the non-prevailing party. If the Watermaster is not the prevailing party in a Watermaster
24 enforcement action, the Watermaster will provide for the payment of the costs and expenses of
25 the Watermaster from the Watermaster Budget.

26 11. Temporary Assignments. Temporary assignment of Annual Allocation (for
27 up to six months of use, which period may be extended for cause upon application to and
28 approval of the Watermaster) will be allowed for well sharing during well maintenance and

1 emergencies, which will be documented by the Parties to the well sharing and a notice signed by
2 both Parties submitted to the Watermaster within 30 days of use for accounting on Watermaster
3 records identifying the nature of the emergency necessitating the temporary assignment, and the
4 BPA Parcels and wells to which the Annual Allocation is assigned.

5 **J. Fallowing Standards**

6 1. Applicable Standards. For the purposes of avoiding blight associated with
7 dead agricultural vegetation and to reduce potential air quality and public health impacts from
8 wind-blown dust, if all or any portion of BPA is to be permanently transferred to another Party by
9 way of permanently fallowing any portion of a Party's irrigated tree crop, the portion permanently
10 retired from irrigation will follow any and all County standards as may be promulgated under the
11 County's land use authority, including any standards imposed under any applicable CEQA
12 document, as may apply. Provided, however, that the Minimum Fallowing Standards described
13 in Exhibit "3" shall serve as the minimum fallowing standards, as supplemented by any County-
14 imposed fallowing standards.

15 2. Compliance with Fallowing Standards. Where practicable, fallowing shall
16 be undertaken prior to the consummation of a permanent transfer. Where pre-transaction
17 fallowing is not practicable, one of the following methods shall be utilized to ensure fallowing is
18 completed within 12 months of the transaction: (1) deposit with the Watermaster 120% of the
19 funds needed to complete the fallowing; (2) securing of a security or performance bond in favor
20 of the Watermaster in an amount equal to 120% of the anticipated cost of the fallowing; or (3)
21 establishment of an escrow for the transaction with a reputable title company with a holdback
22 from the purchase price equal to 120% of the anticipated cost of fallowing payable to the
23 Watermaster if fallowing is not timely completed within 12 months of the transaction. The
24 Watermaster shall be charged with certifying that fallowing standards have been met. Upon such
25 certification, retained funds held by escrow or Watermaster shall be promptly refunded to the
26 appropriate Party or Parties and/or security/performance bonds shall be released. The Party
27 responsible for the costs of complying with the fallowing standards, including the cost of security,
28 are to be negotiated between the Parties to the transfer.

1 3. Fallowing Standards Applicable to Multi-Year Leases. To the extent the
2 Watermaster determines that a multi-year Lease of BPA has resulted in significant amounts of
3 dead trees or other crops on the land of the lessor Party and that the following standards described
4 in Section III.J(1). have been disregarded or not met for a period of at least 24 months, the
5 Watermaster shall have authority to seek a Court order to compel fallowing or impose a monetary
6 assessment to undertake fallowing. Watermaster will be entitled to recover its costs and
7 attorney's fees from the lessor Party should Watermaster be a prevailing Party in such action.
8 The provisions of this Subsection III.J(3) shall not apply to cover crops described in the
9 Minimum Fallowing Standards attached as **Exhibit "3"** nor customary farming practices on the
10 lessor property.

11 4. Fallowing and Water Credits. Annual Allocation associated with BPA that
12 is granted in relation to a conversion of water credits may not be exercised (i.e., Groundwater
13 may not be Pumped pursuant to the BPA) nor the underlying BPA transferred until and unless (a)
14 the fallowing standards set forth in this Judgment have been satisfied for the parcel(s) from which
15 such water credits were generated, as approved by Watermaster, and (b) a restrictive covenant
16 limiting Groundwater production on such parcel(s) was recorded as part of the water credits
17 program, and if that was not recorded, then a new Water Rights Restrictive Covenant is recorded
18 against such parcel(s). Within six (6) months of its formation, the Watermaster shall review the
19 state of satisfaction of requirements (a) and (b) and issue a status letter to each applicable BPA
20 holder informing them that these requirements have been met or what further action is necessary
21 to satisfy these requirements. When the requirements are met, the BPA holder shall then update,
22 if needed, the parcels (identified by assessor parcel numbers) and well(s) (identified by state well
23 number(s)) to which the BPA is assigned and request necessary changes to **Exhibit "4."**
24 Notwithstanding the foregoing, if the BPA holder meets the requirements of this Section J(4)
25 upon or after receipt of the transfer status letter, such BPA holder will have all rights and be
26 burdened with all responsibilities attendant to the BPA, including Carryover accrual, retroactively
27 to the date of this Judgment.
28

1 **K. Available Groundwater Storage Capacity**

2 There likely exists in the Basin a substantial amount of available Groundwater storage
 3 capacity which is not utilized for storage or regulation of Groundwater. Such storage capacity
 4 can appropriately be utilized for storage and conjunctive use of water that may in the future be
 5 imported to the Basin. It is essential that such storage capacity utilization be undertaken only
 6 under Watermaster control and regulation, in order to protect the integrity of the Basin, its
 7 Groundwater and any water imported to the Basin. Accordingly, any Person who wishes to store
 8 and Pump imported water in the Basin must do so pursuant to a storage agreement with
 9 Watermaster. All storage and recovery of imported water in the Basin, and all export of
 10 Groundwater Pumped from the Basin for use on lands that do not overly the Basin, is enjoined
 11 and restrained except pursuant to agreement with Watermaster. In any future allocation of Basin
 12 storage capacity by Watermaster, the needs and requirements of lands overlying the Basin and of
 13 the holders of BPA shall have priority and preference over storage for export.

14 **L. Changes in Point of Extraction and New Wells.**

15 Parties may change the point of Pumping on their real property for any BPA or portion
 16 thereof to another point of Pumping on the same Party's real property, whether by County-
 17 permitted new wells or replacement wells, so long as such change of point of Pumping does not
 18 cause Undesirable Results or interfere with an existing well of another Party.

19 **IV. BASIN ADMINISTRATION**

20 **A. Watermaster.** To assist this Court in the administration of this Judgment, this
 21 Court establishes a Watermaster. Watermaster shall administer and enforce the provisions of this
 22 Judgment (including the administration of the Physical Solution) and any subsequent instructions
 23 or orders of this Court. Watermaster shall, in carrying out its duties, powers and responsibilities
 24 herein, act in an impartial manner without favor or prejudice to any Pumper or Party.

25 **B. Watermaster Board**

26 1. **Composition and Selection.** The Watermaster Board will be comprised of
 27 five members, with each member having one vote, as follows: one representative and one
 28 alternate representing the BWD; one representative and one alternate representing the County;

1 one representative and one alternate representing the agricultural sector Parties; one
2 representative and one alternate representing the recreational sector Parties; and one
3 public/community representative and one alternate. The Parties within the respective agricultural
4 and recreational sectors, and the process for selecting the respective agricultural, recreational, and
5 public/community representatives are specified in Exhibit “7.” Any Watermaster Board member
6 or alternate may be removed by the Court for cause. Any vacancy on the Watermaster Board
7 shall be filled by the same procedure used in the appointment of the vacant seat.

8 2. Decisions of the Watermaster. Except for decisions concerning a subject
9 matter for which a Supermajority Vote is required for approval, as specified in Section IV.B(3)
10 below, a decision agreed to by a majority of the Watermaster Board made when a quorum is
11 present will be a decision of the Watermaster; provided, however, that no action of the
12 Watermaster Board shall become effective without the affirmative vote of at least three members
13 of the Watermaster Board. A quorum constitutes three members of the Board. All Watermaster
14 decisions are final when made and may be appealed to this Court pursuant to Section VII.

15 3. Supermajority Subject Matters. Decisions by the Watermaster Board
16 concerning the following subject matters must receive a Supermajority Vote for approval

- 17 a. Decisions concerning the Watermaster Budget inclusive of the
18 Pumping Assessments;
- 19 b. Any change in the Watermaster Budget resulting in an increase of
20 more than \$50,000;
- 21 c. Establishment of the rate of Overproduction Penalty Assessments;
- 22 d. Approval of capital projects;
- 23 e. Borrowing of funds; and
- 24 f. Purchasing or disposing of real property.

25 4. Watermaster Board Meetings. All Watermaster Board meetings and
26 hearings must be conducted in substantial accordance with the requirements of the California
27 open meeting laws under Government Code sections 54950 et seq., otherwise known as the
28 “Brown Act”. Provided, however, that notwithstanding Government Code, section 54953(b)(3),

1 at least two of the Watermaster Board members shall participate in Board meetings from
2 locations overlying the Basin. Further, because the Watermaster Board acts under the authority
3 of the Superior Court and does not qualify as a “local agency” under Government Code section
4 54951, any and all challenges to Brown Act compliance by the Watermaster Board may be heard
5 only by the Superior Court Judge with continuing jurisdiction over the Judgment in the
6 underlying action, in compliance with the requirements of the Judgment. Regular Watermaster
7 meetings must be noticed with an agenda and supporting materials made available to the public at
8 least three days prior to the meeting, and shall be open to the public in a public location that
9 overlies the Basin. Meeting minutes must be taken of all Watermaster Board meetings, a copy of
10 which must be furnished to any member of the public requesting such minutes.

11 **C. Watermaster Staff.** Watermaster may hire employees or contractors as needed,
12 which may include without limitation (a) one or more technical advisors to provide input to the
13 Technical Advisory Committee, Watermaster staff and the Watermaster Board, (b) a person to
14 prepare meeting notes, prepare an Annual Report to this Court, and administer this Judgment and
15 (c) an attorney to advise and represent the Watermaster. In order to avoid a potential conflict of
16 interest, the Watermaster Technical Consultant (interim or otherwise) must be independent (not
17 under contract with any Party) and selected by the Watermaster with input from the Technical
18 Advisory Committee through an arms-length RFP process, unless otherwise agreed to by a
19 Supermajority Vote of the Watermaster. Any technical advisor, attorney, executive director, or
20 similar employee or contractor performing services that concern technical or policy matters must
21 be independent (not under contract with any Party) and selected by the Watermaster (and if a
22 technical advisor, following input from the Technical Advisory Committee) through an arms-
23 length RFP process unless otherwise agreed by a Supermajority Vote. Any other Watermaster
24 employee or contractor may be employed by, or under contract with a Party, provided that he or
25 she abides by any relevant Court orders, Watermaster determines that the employee or contractor
26 will not be issuing technical or policy recommendations to Watermaster, and the retention of the
27 employee or contractor is appropriate to perform services to Watermaster in the most effective
28 and cost-efficient manner.

1 **D. Rules and Regulations.** The Watermaster will operate pursuant to the
 2 Watermaster Rules and Regulations attached hereto as **Exhibit “5.”** The Watermaster may amend
 3 the Watermaster Rules and Regulation by Supermajority Vote after public hearing, noticed to all
 4 Parties, with a specific draft of the proposed modifications, no less than thirty days prior to the
 5 date of the hearing thereon. Upon the request of any objecting member of the Watermaster, the
 6 Watermaster must obtain Court approval of any proposed changes before they become effective.

7 **E. Watermaster Powers and Responsibilities.**

8 1. Powers. Subject to the continuing supervision and control of this Court,
 9 the Watermaster will have and may exercise: (i) the powers and duties set forth for a GSA
 10 pursuant to Water Code sections 10725 through 10726.5 and 10726.8 to the extent not
 11 inconsistent with any provision of this Judgment and subject to the limitations under SGMA; and
 12 (ii) any specific powers, authority and duties granted or imposed elsewhere in this Judgment.

13 2. Notice List. The Watermaster shall maintain a current list of Parties to
 14 receive notice hereunder.

15 3. Annual Budget Process. The Watermaster shall prepare a Watermaster
 16 Budget for each Water Year, hold hearings thereon, and adopt a final Watermaster Budget. The
 17 annual Watermaster Budget will be determined by the Watermaster in an amount necessary to
 18 fulfill the duties of Watermaster as prescribed by this Judgment and a reasonable reserve, all of
 19 which will be subject to review and revision by the Court pursuant to Section VII. Following the
 20 adoption of the Watermaster Budget, expenditures within budgeted items may thereafter be made
 21 by Watermaster in the exercise of powers herein granted, as a matter of course. Commencing
 22 with the Watermaster Budget for the 2021-2022 Water Year, the annual budget process to
 23 determine the budget for the following Water Year will be as follows:

<u>Completion Deadline</u>	<u>Action</u>
June 30 ³	Watermaster publishes the Watermaster Budget for ensuing Water Year
July 31	Any challenge to the budget by a Party must be initiated by notice to the Watermaster

27 _____
 28 ³ These dates commence in June preceding the beginning of the ensuing Water Year on October 1st for which the Watermaster Budget is being calculated. Therefore, Watermaster will publish the Watermaster Budget for the 2021-2022 Water Year on or before June 30, 2021.

1	August 30	Mediation of any challenge to the budget is completed pursuant to Section VII.A(1)
2	October 15	Any challenge to the budget by a Party unresolved by mediation will be heard by the Court
3		
4	October 15	Watermaster issues notice to each Party of that Party's prior Water Year Pumping (specifying the amount of Pumping of Annual Allocation and Carryover, respectively), and the maximum amount of Annual Allocation eligible for Carryover from the preceding Water Year.
5		Watermaster also provides each Party an estimate of the Pumping Assessment to assist Parties in making informed decisions regarding Carryover election and any election not to Pump or Carryover Annual Allocation in the ensuing Water Year
6		
7		
8		
9	October 31	Court order is entered on any Party's challenge to budget heard by the Court
10	October 31	Each Party informs Watermaster of Carryover election and amount, and any election to forego Pumping and Carryover of its Annual Allocation in the ensuing Water Year. Any Party that did not Pump Groundwater during the preceding Water Year that intends to Pump Groundwater in the ensuing Water Year informs Watermaster of such election.
11		
12		
13	November 30	Watermaster provides Pumping Assessment invoice, based on the Adjusted Pumping Calculation for the preceding Water Year, to each Party for first installment of Pumping Assessment
14		
15	December 31	First installment of Pumping Assessment due
16	May 31	Watermaster provides Pumping Assessment invoice, based on the Adjusted Pumping Calculation for the preceding Water Year, to each Party for second installment of Pumping Assessment
17		
18	June 30	Second installment of Pumping Assessment due

19 4. Pumping Assessments. The annual Watermaster Budget costs in excess of
20 applicable grants, loans, any Overproduction Penalty Assessment funds elected by Watermaster
21 to be applied to the Watermaster Budget (i.e. any such funds not used to Lease Annual Production
22 to offset the Overproduction), and assessments levied and collected on the State Park and the
23 Borrego Springs Unified School District for their Pumping, will be funded by a uniform
24 "Pumping Assessment". To determine each Party's Pumping Assessment, Watermaster will first
25 determine for each Party an "Adjusted Pumping Calculation," which will equal the Amount of
26 Annual Allocation Pumped by the Party during the preceding Water Year (or by the Party's lessee
27 if the Party has Leased any portion of its Annual Allocation to another Party), minus the amount
28

1 of Carryover Pumped during the preceding Water Year⁴ by the Party (or any lessee of the
2 Carryover) and minus any amount of Groundwater Pumped pursuant to a Lease of Annual
3 Allocation or Carryover from another Party, plus the amount of Carryover elected for the ensuing
4 Water Year by the Party. The amount of each Party's Pumping Assessment will be calculated by
5 multiplying the amount of the annual Watermaster Budget against a percentage derived by
6 dividing the amount of the Party's Adjusted Pumping Calculation by the total of all Parties'
7 Adjusted Pumping Calculations. If a Party timely notifies Watermaster that no Pumping will
8 occur pursuant to the Party's BPA during the ensuing Water Year and that the Party will not
9 Carryover any of its Annual Allocation from the preceding Water Year, that Party's Adjusted
10 Pumping Calculation shall be excluded from the total of all Parties' Adjusted Pumping
11 Calculations in calculating Pumping Assessments for the ensuing Water Year under this
12 Subsection IV(E)(4) and the Party will not be assessed a Pumping Assessment in the ensuing
13 Water Year. Under such election, no Pumping may be made pursuant to the applicable Annual
14 Allocation during the ensuing Water Year. If a Party electing to forego Pumping in a Water Year
15 pursuant to a BPA subsequently elects to Pump Groundwater pursuant to the BPA in a future
16 Water Year (i.e., any Water Year after the ensuing Water Year) or transfers the BPA to another
17 Party pursuant to a Lease or Permanent Transfer and the transferee elects to recommence
18 Pumping in the future Water Year pursuant to the BPA, the Party's Adjusted Pumping
19 Calculation for purposes of determining the amount of the Party's (or the transferee's) Pumping
20 Assessment during the Water Year in which it intends to recommence Pumping will be
21 determined on the basis of the Party's Annual Allocation in effect during the preceding Water
22 Year (i.e., for purposes of calculating the Pumping Assessment the Party [or transferee] will be
23 deemed to have Pumped the applicable Annual Allocation during the preceding Water Year).
24 The cumulative Adjusted Pumping Calculations used as the denominator for determining
25 Pumping Assessments will be adjusted in a like amount.

26
27
28 ⁴ There will be no Carryover Pumped during the 2020-2021 Water Year because this will be the first Water Year with Annual Allocations.

1 5. Annual Report

2 a. Process. The Watermaster shall file an Annual Report with this
3 Court not later than February 1 of each Water Year beginning February 1 following the first full
4 Water Year after entry of Judgment. Prior to filing the Annual Report with this Court,
5 Watermaster shall notify all Parties that a draft of the Annual Report is available for review and
6 shall provide notice of a hearing to receive comments and recommendations for changes in the
7 report. The notice of hearing may include such summary of the draft report as Watermaster may
8 deem appropriate. Watermaster shall also distribute the Annual Report to the Parties requesting
9 copies and file it with DWR.

10 b. Contents. The Annual Report shall include the information set
11 forth in Water Code section 10728 and 23 California Code of Regulations section 356.2, an
12 annual fiscal report of the operation of Watermaster during the preceding Water Year, an audit of
13 all assessments and expenditures by Watermaster, a summary of the management of the Basin
14 and Watermaster activities pursuant to this Judgment, a summary of aggregate Pumping, a record
15 of Leases and Permanent Transfers of BPA and the amount of Carryover held by each Party, any
16 recommendations to the Court concerning further orders of this Court to advance the Sustainable
17 Groundwater Management for the Basin, and such additional information as may be required by
18 order of the Court.

19 6. Pumping Reports. Each Pumper shall transmit to Watermaster, pursuant to
20 procedures and time schedules to be established by Watermaster, water production data from the
21 Pumper's meter system. Each Pumper shall annually file with Watermaster, on a form to be
22 prescribed by Watermaster, a report that provides: (i) a written verification by the manufacturer
23 or qualified meter installer certifying the ongoing accuracy of the meter readings and meter
24 calibration, as well as verification that there are no valves or other devices upstream of the meter
25 that could lead to pumped water being diverted before being read by the meter; and (ii) such
26 additional information as may be required by order of the Court.

27 7. Meetings with the Technical Advisory Committee. The Watermaster shall
28 meet on a regular basis and at least semi-annually with the Technical Advisory Committee to

1 review Watermaster activities pursuant to this Judgment and to receive advisory
2 recommendations from the Technical Advisory Committee.

3 8. Unauthorized Pumping. The Watermaster shall undertake any action,
4 including bringing any motion to the Court, necessary to enjoin unauthorized Pumping.

5 9. Data, Estimates and Procedures. The Watermaster shall use, among other
6 available data, BVHM runs and best available records and data to support the implementation of
7 this Judgment. Where actual records of data are not available, Watermaster shall rely on and use
8 sound scientific and engineering estimates for the BVHM runs. Watermaster may use
9 preliminary records of measurements, and, if revisions are subsequently made, Watermaster may
10 reflect such revisions in subsequent accounting.

11 10. Watermaster's Access to Private Property. Watermaster may enter the
12 private property of Parties for the purpose of administering its responsibilities under this
13 Judgment, provided that, excepting any entry only for the specified water quality monitoring and
14 alternative meter inspection purposes pursuant to Sections VI(A) and VI(B), such entry may only
15 be made at the permission of the Party and following execution of another Entry Agreement as
16 specified in Exhibit "8" specifying the other activities to be undertaken, or pursuant to or an
17 inspection warrant under Water Code section 10725.4.

18 **F. Injuries Caused by Watermaster and Board Member, Officer, and**
19 **Appointing Entity Liability.** As a special master of this Court, Watermaster will not be held
20 liable to any Person for any injury, at law or in equity, alleged to result or arise from,
21 Watermaster's actions or omissions. The Court may, however, through noticed motion to this
22 Court under the continuing jurisdiction provisions set forth in Section VII of this Judgment, order
23 Watermaster to effect an appropriate remedy for any Person demonstrating an injury resulting
24 from Watermaster's actions or omissions, including without limitation payment of monetary
25 sums. No Watermaster Board member or officer, nor any Person appointing a Watermaster
26 Board member, will be held liable for any injury arising from or relating to a Watermaster Board
27 member's or officer's service on behalf of Watermaster if such Board member or officer
28 conducted himself or herself in good faith and reasonably believed that his or her conduct was

1 lawful and in compliance with the Judgment, Rules and Regulations of the Watermaster and
2 orders of the Court. If any dispute arises concerning the satisfaction of this criteria for such
3 exemption of liability pursuant to the preceding sentence, the Court will determine such matter on
4 noticed motion pursuant to the continuing jurisdiction provisions set forth in Section VII of this
5 Judgment. If this Court determines in such a proceeding that the Board member's or officer's
6 conduct was made in good faith and pursuant to a reasonable belief that his or her conduct was
7 lawful and in compliance with the Judgment, Rules and Regulations of the Watermaster and
8 orders of the Court, then: (i) any monetary remedies ordered by this Court will not be paid by the
9 subject Watermaster Board member, officer, or appointing Person, but rather by Watermaster;
10 and (ii) any reasonable attorney fees, costs, or other expense incurred by such Watermaster Board
11 member, officer, or appointing Person in defense of, or as a result of, the matter will be paid in
12 advance or reimbursed by Watermaster. Watermaster shall obtain and maintain liability
13 insurance, including Officers and Directors coverage, in amounts reasonably necessary to cover
14 Watermaster's obligations under this Section IV.F, provided that Watermaster shall only be
15 obligated to obtain as much of such insurance as is available to Watermaster at reasonable rates.

16 **G. Technical Advisory Committee**

17 1. Selection of Technical Advisory Committee. A Technical Advisory
18 Committee is established to advise the Watermaster on technical matters. TAC meetings may be
19 conducted by meeting within the Basin, by telephone conference, or by web-based video
20 conference, as determined by the TAC members from time to time. TAC meetings shall be open
21 to the public, and shall provide an opportunity for public comment. Membership of the Technical
22 Advisory Committee will be open to an expert hired by any Party holding BPA or the County.
23 To participate on the Technical Advisory Committee, the expert must be a California licensed
24 hydrogeologist, California licensed engineer, professional hydrogeological modeler, professional
25 Groundwater statistician, or other California licensed member of a recognized professional
26 discipline approved by the Watermaster. The Technical Advisory Committee will endeavor to
27 decide all matters by consensus. If consensus cannot be achieved, the Technical Advisory
28 Committee will present a report to the Watermaster describing the differences of opinion and

1 arguments in support thereof, with a draft of the report circulated for comment and input by all
2 Technical Advisory Committee members prior to submission of the report to Watermaster.

3 2. Technical Advisory Committee Duties and Responsibilities. The Technical
4 Advisory Committee's responsibilities will include, without limitation, making recommendations
5 based on best science and data collected regarding the Water Budget and the avoidance of
6 Undesirable Result, determined by the TAC based on best available data, including without
7 limitation information generated from BVHM model runs. Such assessment must consider all
8 inflows and outflows from the Basin, including without limitation mountain front underflow and
9 flux into the Borrego Springs Basin across the Coyote Creek fault and all other underflows,
10 agricultural and recreational irrigation return flows; specific yield differences of the three aquifers
11 (upper, middle, and lower) within the different Management Areas of the Basin; and other matters
12 approved by the Watermaster to improve upon initial assumptions regarding the Water Budget
13 that will enable better Adaptive Management of the Basin.

14 **H. Environmental Working Group.** An Environmental Working Group (EWG)
15 will be established to advise the Watermaster on GDE and any other matters approved by the
16 Watermaster. The EWG budget, which shall be adequate for the EWG to carry out its
17 responsibilities as directed by the Watermaster, will be included in the Watermaster Budget.

18 **V. ASSESSMENTS**

19 **A. Authorized Assessments.** The Watermaster is authorized to set, levy and collect
20 assessments from the Parties as described herein.

21 1. Pumping Assessment. The Watermaster shall provide an invoice for the
22 assessed Pumping Assessment to each Party pursuant to the schedule set forth in Section IV.E(3).
23 Each Party who does not timely notify Watermaster of their election to forego Pumping and
24 Carryover of its Annual Allocation in the ensuing Water Year will be liable for the payment of
25 such invoice regardless of whether they subsequently Lease or Permanently Transfer part or all of
26 their Annual Allocation during that Water Year. An appeal of the Watermaster's calculation of
27 any Pumping Assessment must be brought pursuant to Section VII of this Judgment within thirty
28 (30) days of receipt of Watermaster's invoice. Payment of any Pumping Assessment appealed to

1 the Court must be made within ten (10) days following the Court order on appeal. If payment is
2 not made on or before the applicable due date, the Watermaster will add a penalty of one percent
3 (1%) per month thereof to such Party's statement.

4 2. Overproduction Penalty Assessment. The Watermaster shall provide an
5 invoice for an Overproduction Penalty Assessment to each Party who produces in excess of the
6 Party's Max Overproduction Limit, subject to Section III.G herein no later than thirty (30) days
7 following the end of the Water Year in which the Overproduction occurred. Any appeal of an
8 assessed Overproduction Penalty Assessment must be brought pursuant to Section VII of this
9 Judgment within thirty (30) days of receipt of Watermaster's invoice for the Overproduction
10 Penalty Assessment. Unless timely appealed, payment of Watermaster's invoice for the
11 Overproduction Penalty Assessment must be made within ten (10) days of receipt of the invoice.

12 3. Failure to Pay Assessment and Enforcement of Assessments. If a Party
13 knowingly fails to pay an assessment after receipt of the notice of assessment pursuant to the
14 terms of this Judgment within 30 days of it becoming due pursuant to the terms of this Judgment,
15 the Party shall be liable to the Watermaster for interest at a rate of 1 percent per month on the
16 delinquent amount of the assessment and a 10-percent penalty of the amount of the assessment
17 without any interest thereon, consistent with Water Code section 10730.6(b). To collect payment
18 of any delinquent assessment properly levied pursuant to this Section V, Watermaster may
19 exercise the same collection methods authorized to a GSA under Water Code section 10730.6 or
20 the statutory authority of BWD to collect on the tax rolls unpaid assessments pursuant to the
21 BWD's enabling legislation. (Wat. Code, §§ 37200 et seq.).

22 **VI. WELL METERING AND WATER QUALITY TESTING**

23 A. Meter Installation for the Purpose of Accurately Measuring Water Use.
24 Parties holding BPA will install and maintain, at their own expense, meters approved by
25 Watermaster that can electronically transmit a recording of the amount of Groundwater Pumped
26 from the Basin and other data to the Watermaster in real time on a schedule as determined by the
27 Watermaster. This meter program will result in cost savings by avoiding the need for the
28 Watermaster to physically read, inspect and validate the accuracy of meters. Alternatively, any

1 Party holding BPA may elect to install and maintain, at its own expense, other meters approved
2 by Watermaster on condition that: (i) the Watermaster physically read the meters on the schedule
3 determined by the Watermaster and the Party pay all costs associated with the Watermaster's
4 reading, accounting and reporting related to such meters; and (ii) the Party has executed an Entry
5 Agreement as specified in Exhibit "8" for the purpose of allowing Watermaster access to the
6 Party's well.

7 **B. Water Quality Monitoring Plan**

8 1. Purpose. Regular water quality monitoring is essential to avoiding
9 Undesirable Results and achieving Sustainable Groundwater Management for the Basin.

10 2. Administration. Water quality monitoring will be conducted at times and
11 places established by a water quality monitoring plan, which will include a designated network of
12 monitoring wells, developed by the Watermaster with Technical Advisory Committee input
13 within 24 months of entry of Judgment. The Watermaster will determine if changes in water
14 quality are significant and unreasonable following consideration of the cause of impact, the
15 affected beneficial use, potential remedies, input from the Technical Advisory Committee, and
16 subject to approval by this Court exercising independent judgment. Any Party may appeal the
17 approval of the water quality monitoring plan to this Court for resolution pursuant to Section VII.
18 Qualified Watermaster staff or consultants are permitted to access private property for the sole
19 purpose of water quality testing under the approved water quality monitoring program in
20 compliance with the terms of an Entry Agreement with the landowner. Such Entry Agreement
21 must be in substantial compliance with the form of agreement attached hereto as Exhibit "8,"
22 which will protect the landowner from liability for damage and injury resulting from
23 Watermaster's entry onto the parcel (including naming the landowner and all businesses
24 operating on the property as additional insured), provide for advance notice, limit activities on the
25 parcel to those necessary to accomplish the purpose of the entry, avoid undue interference with
26 agricultural or other business activities upon the parcel, and ensure the safety of third parties
27 entering onto operating agricultural properties. Nothing in this Judgment shall preclude the
28 Watermaster from obtaining an inspection warrant under Water Code section 10725.4.

1 **VII. CONTINUING JURISDICTION AND APPEAL OF WATERMASTER**
2 **DECISIONS**

3 **A. Jurisdiction Reserved.** Consistent with Section 852 of the Code of Civil
4 Procedure, full jurisdiction, power and authority are retained by and reserved to this Court for
5 purposes of enabling this Court upon the noticed motion of any Party or the Watermaster, or sua
6 sponte, to make such further or supplemental orders or directions as may be necessary or
7 appropriate for: (i) the operation of the Physical Solution established by this Judgment; (ii)
8 interpretation, enforcement or carrying out of this Judgment, or (iii) the modification,
9 amendment, or amplification any of the provisions of this Judgment, or to add to the provisions
10 hereof, consistent with the rights herein decreed.

11 1. Contested Watermaster decisions or other matters of disagreement will be
12 reviewed by this Court upon noticed motion of any Party, any Watermaster Board member or the
13 Watermaster. The Court review shall be de novo, without evidentiary weight to the Watermaster
14 action or decision. The decision of the Court upon any such motion shall be an appealable
15 “Supplemental Order” in this case. When the Supplemental Order is final it shall be binding upon
16 the Watermaster and the Parties. With the exception of motions to review the Watermaster
17 Budget or any assessment issued by Watermaster, which are subject to a thirty (30) day filing
18 deadline, any such motion must be filed with the Court within ninety (90) days of the
19 Watermaster decision or action or it is barred. Unless otherwise agreed by all Parties in
20 disagreement, any Watermaster Boardmember in disagreement, and Watermaster if the dispute
21 involves Watermaster (“Party(ies) in Disagreement”), upon filing a motion with this Court to
22 resolve the disagreement, the Parties in Disagreement shall first engage in mediation, which
23 mediation will extend the Court hearing date for up to sixty (60) days while the mediation is
24 pending. Unless otherwise provided for herein or the Parties in Disagreement agree otherwise,
25 the mediation will be initiated and conducted under the applicable rules of the American
26 Arbitration Association that are applicable as of the date of the dispute. The mediation will be
27 limited to one full day unless extended by the Parties in Disagreement. The Parties in
28 Disagreement participating in any such mediation will be responsible for their own individual

1 costs of participation and shall split evenly the cost of the mediation unless the Watermaster is a
2 Party in Disagreement, in which case the Watermaster shall contribute 50% of the cost, using
3 funds from Watermaster's annual budget, and the other 50% of the cost will be split evenly
4 among the other Parties in Disagreement participating in the mediation.

5 2. This Court may appoint an independent special master or referee to advise
6 this Court with respect to any dispute.

7 3. Annual status conferences will be established as part of this Judgment for
8 the Watermaster to report to this Court, for this Court to consider any matters presented by the
9 Watermaster requiring Court approval, and for review of any disputed matters noticed for hearing
10 on the date of the annual status conference in accordance with this Section VII.A(3).

11 4. Any Watermaster Board member, officer, or Person appointing a
12 Watermaster Board member, including but not limited to the County of San Diego, named in
13 litigation filed after the close of the Annual Budget and Pumping Assessment proceedings under
14 Section IV.E(3), (4), may bring a motion to this Court without the necessity of engaging in
15 mediation pursuant to Section VII.A(1), to obtain an order of this Court to revise the Annual
16 Budget and Pumping Assessment as necessary to ensure that the Watermaster is properly
17 capitalized to promptly fund Watermaster's responsibilities set forth in Section IV.F.

18 **B. Watermaster Enforcement.** Watermaster (as well any Party upon Watermaster's
19 failure or refusal to enforce) may petition this Court to issue enforcement orders, upon noticed
20 motion and after hearing, as necessary to remedy any non-compliance with the terms of this
21 Judgment. The prevailing party, including without limitation the Watermaster, in an enforcement
22 action will be entitled to recover its costs of suit, attorneys' fees and reasonable costs of
23 collection, which may include obtaining a lien on the Party's (Parties') BPA Parcel, if applicable,
24 as prescribed by this Judgment. Watermaster is also authorized to coordinate with the County in
25 connection with County enforcement of land use and nuisance ordinances related to following.

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1 **VIII. FINDINGS**

2 **A.** The Judgment is consistent with Section 2 of Article X of the California
3 Constitution, requiring that the water resources of the State be put to beneficial use to the fullest
4 extent possible.

5 **B.** The Judgment is consistent with the water right priorities of all non-stipulating
6 Parties and any Persons who are De Minimis Pumpers.

7 **C.** The Judgment treats all objecting Parties and any persons who have claims that are
8 exempt equitably as compared to the Stipulating Parties.

9 **D.** Plaintiff complied with the service and notice provisions of Code of Civil
10 Procedure sections 835 and 836, which compliance is deemed effective service of process of the
11 Complaint and notice on all interested parties of the Comprehensive Adjudication of the Basin for
12 purposes of establishing in rem jurisdiction and the comprehensive binding effect of the
13 Comprehensive Adjudication, consistent with Code of Civil Procedure sections 836(j) and 851.

14 **E.** All rights to Pump and store water in the Basin are comprehensively determined
15 by this Judgment consistent with Code of Civil Procedure sections 830(b)(7) and 834. All
16 unexercised rights and future rights to Pump water in the Basin are subordinated to all rights of
17 the Parties currently being exercised and rights authorized under this Judgment, consistent with
18 Code of Civil Procedure section 830(b)(7).

19 **F.** Pumping by Parties that are De Minimis Pumpers as of the time of the filing of the
20 Complaint does not presently have a material effect on the groundwater rights of other Parties.
21 Accordingly, this Judgment does not presently regulate a Party that was Pumping Groundwater as
22 a De Minimis Pumper as of the time of the filing of the Complaint, provided the Pumping by such
23 De Minimis Pumper remains within the two acre foot use limitations established in this Judgment
24 and provided that such De Minimis Pumper does not seek to transfer their Pumping to another
25 real property owned by another Person. The Court may revisit and change this finding upon a
26 showing of necessity for the Adaptive Management of the Basin pursuant to the Court's
27 continuing jurisdiction.

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1 **IX. BINDING EFFECT**

2 The Judgment is binding on the Parties to the Comprehensive Adjudication and all their
3 successors in interest, including, but not limited to, heirs, executors, administrators, assigns,
4 lessees, licensees, the agents and employees of the Parties to the Comprehensive Adjudication
5 and all their successors in interest, and all landowners or other persons claiming rights to Pump
6 Groundwater from the Basin, consistent with Code of Civil Procedure section 851. The Judgment
7 also is an in rem judgment binding on all real property overlying the Basin. The Watermaster
8 may cause this Judgment to be recorded against any or all parcels overlying the Basin. The
9 grantor of any real property subject to this Judgment shall notify the purchaser of the existence of
10 the Judgment and its binding effect on the real property.

11 **X. MISCELLANEOUS PROVISIONS**

12 **A. Water Quality.** Nothing in this Judgment shall be interpreted as relieving any
13 Party of its responsibilities to comply with State or Federal laws for the protection of water
14 quality or the provisions of any permits, standards, requirements, or orders promulgated
15 thereunder.

16 **B. Well Abandonment.** The Parties and Watermaster agree to cooperate with the
17 County in the enforcement of the County's well abandonment ordinance in effect in the Basin as
18 improperly abandoned wells have the potential to provide a migration pathway of contaminants
19 into the Basin.

20 **C. Designation of Address for Notice and Service.** Each Party shall designate the
21 name, address, and e-mail address to be used for purposes of all subsequent notices and service,
22 either by its endorsement on this Judgment or by a separate designation to be filed within thirty
23 days after Judgment has been entered. This designation may be changed from time to time by
24 filing a written notice of such change with Watermaster. Any Party desiring to be relieved of
25 receiving notices may file a waiver of notice on a form approved by the Watermaster. If no
26 designation is made, a Party's designee shall be deemed to be, in order of priority: i) the Party's
27 attorney of record; ii) if the Party does not have an attorney of record, the Party itself at the
28 address specified on the Watermaster's list.

1 **D. Notice and Service of Documents.** All notices or service of documents pursuant
2 to this Judgment by Watermaster or any Party will be made by electronic mail to the greatest
3 extent feasible.

4 **E. No Abandonment of Rights.** In the interest of the Basin and its water supply, and
5 the principle of reasonable and beneficial use, no Party shall be encouraged to Pump and use
6 more water in any Water Year than is reasonably required. Failure to Pump all of the
7 Groundwater to which a Party is entitled will not be deemed or constitute a forfeiture or an
8 abandonment of such Party's right, in whole or in part, except upon a written election by the Party
9 holding the BPA or by order of the Court exercising continuing jurisdiction under Section VII
10 upon noticed motion and after hearing.

11 **F. Costs.** Except subject to any existing Court orders and stipulations or separate
12 agreement of one or more Parties, each Party shall bear its own costs and attorneys' fees arising
13 from the Comprehensive Adjudication.

14 **G. Headings; Paragraph References.** Captions and headings appearing in this
15 Judgment are inserted solely as reference aids for ease and convenience; they shall not be deemed
16 to define or limit the scope or substance of the provisions they introduce, nor shall they be used in
17 construing the intent or effect of such provisions.

18 **H. Third Party Beneficiaries.** There are no intended third party beneficiaries of any
19 right or obligation of the Parties.

20 **I. Severability.** Except as specifically provided herein, the provisions of this
21 Judgment are not severable.

22 **J. Mutual Water Companies Formed After Entry of Judgment.** Any mutual
23 water company formed after entry of Judgment shall only construct, install and operate water
24 conveyance, production, storage and supply facilities, including but not limited to wells and
25 pipelines, that meet the laws, standards and regulations specified in **Exhibit "9."** Further, no
26 mutual water company formed after entry of Judgment shall seek to be acquired by, merge with,
27 or be taken over by BWD without the express, advance written consent of BWD.
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Nothing in this Judgment is intended to preclude any party, including but not limited to BWD, from advancing positions regarding any such mutual water company's ability to meet the laws, standards and regulations applicable to mutual water companies.

K. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Judgment.

L. Exhibits and Other Writings. Any and all exhibits, documents, instruments, certificates or other writings attached hereto or required or provided for by this Judgment, if any, will be deemed part of this Judgment and will be considered set forth in full at each reference thereto in this Judgment.

Dated: _____, 2021

By: _____
Peter J. Wilson
Superior Court of the State of California for
the County of Orange