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BORRÉGO WATER DISTRICT

Exempt from Filing Fees Pursuant to
Government Code Section 6103

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

13 BORRÉGO WATER DISTRICT,

14 Plaintiff,

15 v.

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

21 Defendants.

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

22 SUPPLEMENTAL JOINT STATUS
CONFERENCE STATEMENT

Date: December 18, 2020
Time: 9:00 a.m.
Dept.: CX102

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

BEST BEST & KRIEGER LLP

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Plaintiff Borrego Water District (“BWD”) and the signing settlement defendants below
3 (collectively, the “Settling Parties”), submit this supplemental joint status conference statement
4 pursuant to the Court’s order at the November 20, 2020 status conference. The Settling Parties
5 request that the Court:

- 6 1. Authorize an alternative notice procedure to the few remaining property owners
7 who were unable to be served due to inaccessibility of their parcels by way of:
8 (1) certified mail with delivery confirmation, to the mailing address of record
9 according to the County Assessor’s office; and (2) publication once per week in
10 the Uptown San Diego Examiner for two consecutive weeks;
- 11 2. Continue the Case Management Conference that will take the form of a pretrial
12 conference, set for February 11, 2021, to enable completion of the alternative
13 notice procedure; and
- 14 3. Continue the hearing for entry of stipulated judgment, set for March 11, 2021.

15 **I. UPDATE RE PROCEDURAL STATUS**

16 A. Named Defendants

17 All named defendants, except for the two listed below, have returned a notice of
18 acknowledgement of receipt of summons, have been personally served, and/or have filed an
19 answer.

- 20 1. Robert J. Larkins – BWD served Mr. Larkins via FedEx with notice of
21 acknowledgement of receipt on December 2, 2020. BWD spoke with Mr. Larkins
22 on December 12, 2020, and he informed BWD that he was going to return the
23 acknowledgement of receipt. If BWD does not receive a signed acknowledgement
24 of receipt from Mr. Larkins, it will attempt to personally serve him.
- 25 2. Araceli C. Navarro – BWD has made two mail service attempts on Ms. Navarro.
26 Her husband and joint property owner, Manuel Navarro, has returned a signed
27 acknowledgment of receipt, but Ms. Navarro has not. BWD is now attempting to
28 personally serve Ms. Navarro.

1 B. New Appearances by Overlying Landowners

2 The following additional persons/entities have filed and/or served a response since the last
3 status conference statement was filed:

4 Overlying Landowners	5 <u>Answer Date</u>
6 Hayden I. and Sherry R. Dubay	7 11/12/2020 (served only, does not appear on ROA)
8 Patrick Spreter	9 11/17/2020 (filed)
10 Mathes Family Limited Partnership	11 12/10/2020 (filed)

11 C. Notice to Overlying Landowners

12 Section 836(d)(1)(B) requires BWD to mail, by registered mail or certified mail, return
13 receipt requested, the notice of adjudication, complaint, and form answer to all holders of fee title
14 to real property in the basin. If the physical address of the real property differs from the address of
15 the holder of fee title, the notice, complaint, and form answer shall be mailed by registered or
16 certified mail, return receipt requested, to the physical address of the real property and the address
17 of the holder of fee title. Beginning in September 2020, a total of 4,767 notices were mailed by
18 certified mail, return receipt requested, to all holders of fee title to real property in the Basin.

19 Pursuant to Section 836(d)(1)(C), BWD caused its notice vendor, JND Legal
20 Administration, to post or stake a copy of the notice of adjudication, complaint, and form answer,
21 in a conspicuous place on the real property for parcels for which it did not receive a return receipt.
22 Posting and/or staking on properties for which a receipt had not been received was completed
23 over the past several weeks.

24 The vendor was unable to post notice on eighteen (18) parcels due to inaccessibility. The
25 vendor delivered those notice packets to BWD, and BWD is currently attempting to locate and
26 post on/stake those parcels to the extent possible. For any parcel on which BWD is unable to post
27 notice, the Settling Parties request that the Court authorize an alternative means to effect notice
28 for those property owners and parcels as set forth in section II below.

1 **II. REQUEST PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 836(i)**

2 Code of Civil Procedure section 836(i) provides that the “court may authorize any other
3 procedures it finds appropriate and necessary to provide notice to persons who may hold
4 groundwater rights in the basin.” Pursuant to this authority, the Settling Parties request that the
5 court authorize the following notice procedure for property owners from whom it did not receive
6 a return receipt and on whose parcels BWD has been unable to post notice:

- 7 1. BWD or its vendor shall mail by certified mail, with delivery confirmation, a copy
8 of the complaint, notice of adjudication, and form answer to the mailing address
9 of record according to the County Assessor’s office; and
10 2. BWD shall publish notice with respect to these owners/parcels in the Uptown San
11 Diego Examiner once per week for two consecutive weeks.

12 Compliance with this procedure, or an alternative notice procedure determined by this Court,
13 shall constitute compliance with the notice requirements of Code of Civil Procedure section
14 836(d)(1). Good cause exists to grant this request because BWD has diligently attempted to
15 provide notice to these persons/parcels but has been unable to do so. Accordingly, the Settling
16 Parties request the Court’s assistance to ensure compliance with Code of Civil Procedure section
17 836 and “effective service of process of the complaint and notice on all interested parties of the
18 comprehensive adjudication for purposes of establishing in rem jurisdiction and the
19 comprehensive effect of the comprehensive adjudication.” (See Code Civ. Proc. § 836(j).)

20 **III. UPCOMING DATES**

21 The dates for (1) the Case Management Conference that will take the form of a pretrial
22 conference, set for February 11, 2021, and (2) the hearing for entry of stipulated judgment, set for
23 March 11, 2021, were set with the assumption that service and notice would be complete by
24 December 4, 2020. Because service and notice requirements are not yet complete, the Settling
25 Parties anticipate the need to continue these dates approximately two to six weeks, depending on
26 the status of notice and service on December 18, 2020, as to be determined at the further status
27 conference on December 18, 2020.
28

1 Dated: December 14, 2020

BEST BEST & KRIEGER LLP

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By: 

JAMES B. GILPIN
STEVE M. ANDERSON
SARAH CHRISTOPHER FOLEY
Attorneys for Plaintiff
BORRÉGO WATER DISTRICT

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7 Dated: December 14, 2020

O'MELVENY & MYERS LLP

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By: */s/ Russell McGlothlin*

RUSSELL MCGLOTHLIN
Attorneys for Defendants
T2 BORREGO LLC
T2 FARMS LLC, and
T2 HOLDINGS LLC

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13 Dated: December 14, 2020

JACKSON TIDUS

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By: */s/ Michele A. Staples*

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California limited liability company; SELEY
RANCHES, L.P., a California limited
partnership; SHENANDOAH GROWERS,
INC., a Virginia corporation; TROJAN
CITRUS, LLC, a California limited liability
company; GAMINI D. WEERASEKERA, an
individual and owner and manager of
Mountain Springs Organics, LLC, a
California limited liability company; THE
JENSEN FAMILY TRUST DATED
AUGUST 5, 1983; THE SOMMERVILLE
TRUST DATED NOVEMBER 22, 1983;
TRUST A OF THE CONZELMAN
FAMILY TRUST DATED NOVEMBER 22,
1983; TRUST C OF THE CONZELMAN
FAMILY TRUST DATED NOVEMBER 22,
1983; MICHAEL C. WARD

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3 **PROOF OF SERVICE**

4 I, Jannine South, declare:

5 I am over the age of eighteen years and not a party to the within-entitled action. My
6 business address is 655 West Broadway, 15th Floor, San Diego, California 92101. On
7 December 14, 2020, I served a copy of the within document(s):

8 **SUPPLEMENTAL JOINT STATUS CONFERENCE STATEMENT**

- 9
- 10 **By United States mail.** I enclosed the documents in a sealed envelope or package
addressed to the persons at the addresses listed below (specify one):
- 11 Deposited the sealed envelope with the United States Postal Service, with
12 the postage fully prepaid.
- 13 Placed the envelope for collection and mailing, following our ordinary
14 business practices. I am readily familiar with this business's practice for
collecting and processing correspondence for mailing. On the same day that
15 correspondence is placed for collection and mailing, it is deposited in the
ordinary course of business with the United States Postal Service, in a
16 sealed envelope with postage fully prepaid.

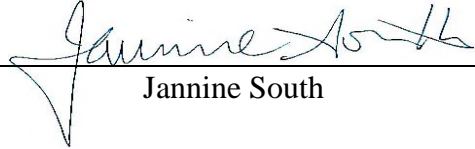
17 I am a resident or employed in the county where the mailing occurred. The
18 envelope or package was placed in the mail at San Diego, California.

- 19 **By overnight delivery.** I enclosed the documents in an envelope or package
20 provided by an overnight delivery carrier and addressed to the persons at the
addresses listed below. I placed the envelope or package for collection and
21 overnight delivery at an office or a regularly utilized drop box of the overnight
delivery carrier.
- 22 **By e-mail or electronic transmission.** Based on an agreement of the parties to
23 accept service by e-mail or electronic transmission, I caused the documents to be
sent to the persons at the e-mail addresses listed below. I did not receive, within a
24 reasonable time after the transmission, any electronic message or other indication
that the transmission was unsuccessful.
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PLEASE SEE ATTACHED SERVICE LIST

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

Executed on December 14, 2020, at San Diego, California.



A handwritten signature in cursive script that reads "Jannine South". The signature is written in black ink and is positioned above a horizontal line.

Jannine South

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SERVICE LIST

Borrego Water District v. All Persons Who Claim A Right To Extract Groundwater, et al,
Orange County Superior Court, Central, Case No. 37-2020-00005776

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TROJAN CITRUS, LLC, a California limited liability company	
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THE SOMMERVILLE TRUST DATED NOVEMBER 22, 1983	
TRUST A OF THE CONZELMAN FAMILY TRUST DATED NOVEMBER 22, 1983	
TRUST C OF THE CONZELMAN FAMILY TRUST DATED NOVEMBER 22, 1983	
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