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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF**

,		
	Plaintiff,	Case No.
v.		
,		
	Defendant.	

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1 [TOC PLACEHOLDER]

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1 Sustainable Groundwater Management for the Basin consistent with the directives of SGMA and  
2 Article X, section 2 of the California Constitution, and to achieve a durable solution to alleviate  
3 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 [DATE].

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 [DATE].

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 [DATE], the Court approved the Notice of  
20 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 [DATE] consistent with Code of Civil Procedure section 836.

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

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

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

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

25 **M. Stipulation for Entry of Judgment.** The Stipulating Parties represent a  
26 substantial majority of the Pumpers, by number and by quantity of water rights defined herein.  
27 The Judgment is consistent with and meets the requirements of Code of Civil Procedure section  
28 850(b). The Stipulating Parties represent approximately [ ] percent of all Pumpers and

1 approximately [REDACTED] percent of all BPA in the Basin. The Stipulating Parties intend for this Court to  
2 comprehensively adjudicate all Groundwater rights in the Basin. BWD submitted the form of this  
3 Judgment, inclusive of the GMP which together constitutes the Physical Solution that is  
4 established by this Judgment, to DWR for review and approval to serve as an alternative to a GSP  
5 pursuant to SGMA. (Wat. Code, §§ 10733.6; 10737.4.) DWR's approval was issued on  
6 [REDACTED], 20[REDACTED].

## 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  
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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 – (i) Any person or entity who extracts, for domestic  
27 purposes, two acre-feet or less per year, consistent with SGMA (Wat. Code, § 10721(e)); or (ii)  
28 any public agency that extracts two acre-feet or less per year.

- 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.G.
- 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.    ~~41.~~Permanent Transfer – A transfer of BPA, including any portion of a  
18 Party’s total BPA, which will be permanently added to the buyer’s cumulative BPA and  
19 subtracted from the seller’s BPA, and when multiplied by the Pumping Percentage will establish  
20 additional Annual Allocation of the buyer in each Water Year (less any water Pumped in that year  
21 by the selling Party) and thereafter.

22                   43.    ~~42.~~Person – Includes, but is not limited to, corporations, partnerships,  
23 trusts, firms, counties, local agencies, state agencies, federal agencies, tribes, business entities,  
24 individuals, and groups of individuals.

25                   44.    ~~43.~~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. ~~44.~~ 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. ~~45.~~ Pump – The process of extracting Groundwater from the Basin.

8 47. ~~46.~~ Pumper – A Party who Pumps Groundwater from the Basin.

9 48. ~~47.~~ Pumping Assessment – Defined in Section IV.E(3).

10 49. ~~48.~~ Pumping Percentage – The percent of a Party’s BPA that is authorized  
11 to be Pumped in any particular Water Year.

12 50. ~~49.~~ 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. ~~50.~~ 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. ~~51.~~ Second Five-Year Period – Water Years 2025/2026 through 2029/2030.

20 53. ~~52.~~ SGMA – The Sustainable Groundwater Management Act set forth at  
21 California Water Code sections 10720 et seq.

22 54. ~~53.~~ State Park – The Anza Borrego Desert State Park.

23 55. ~~54.~~ Supermajority Vote – An affirmative vote of no less than four members  
24 of the Watermaster Board.

25 56. ~~55.~~ 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.    ~~56.~~ 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.    ~~57.~~ Technical Advisory Committee – The advisory body established  
6 pursuant to Section IV.F(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.    ~~58.~~ Third Five-Year Period – Water Years 2030/2031 through 2034/2035.

11                   60.    ~~59.~~ Undesirable Results – As defined by Water Code section 10721(x).

12                   61.    ~~60.~~ Water Budget – An accounting of the total Groundwater and surface  
13 water entering and leaving the Basin including the changes in the amount of water stored  
14 consistent with SGMA (Wat. Code, § 10721(y).)

15                   62.    ~~61.~~ 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.    ~~62.~~ Watermaster Board – The five-member Board governing the  
19 Watermaster as defined in Section IV.B.

20                   64.    ~~63.~~ Watermaster Budget – The budget to fund the operation and  
21 administration of the Watermaster, and programs undertaken by, or on behalf of Watermaster,  
22 which will be prepared annually by Watermaster consistent with the provisions of Section  
23 IV.E(3) of this Judgment.

24                   65.    ~~64.~~ Watermaster Rules and Regulations – The rules and regulations  
25 attached as **Exhibit “5”** as may be amended from time to time by the Watermaster consistent  
26 with the terms of this Judgment.

27                   66.    ~~65.~~ Water Rights Restrictive Covenant – As defined in Section III.I(7).  
28

1                    67.    ~~66.~~ Water Year – October 1st to September 30<sup>th</sup>. (Wat. Code,  
2 § 10721(aa).)

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

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

6                    **Exhibit “2”**                    Stipulation

7                    **Exhibit “3”**                    Minimum Following Standards

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

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

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

11                   **Exhibit “7”**                   Process for Selecting Watermaster Public/Community Representative and  
12 Process for Selecting Recreational Sector Representative

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

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

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

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

17                   3.                   “May” is permissive;

18                   4.                   “Or” is not exclusive; and

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

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

23                   **II.    PHYSICAL AND LEGAL SETTING.**

24                   **A.    Complexity and Scope of Action.** The physical and legal issues of this case are  
25 complex. Pumping of more than        persons Pumping Groundwater from the Basin has been  
26 ascertained. In excess of       ,000 persons have been served. The Groundwater rights of the entire  
27 Basin have been brought into issue and the action has been made a full in rem adjudication of  
28

1 water rights to the Basin as to all real property owners in the Basin pursuant to Sections 830 et  
2 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 31, 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 Subbasin 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 Baseline Pumping Allocation of each Party is as set forth  
24 in **Exhibit “4.”** **Exhibit “4”** also identifies the legal parcel(s) to which the BPA attaches  
25 (excepting the BWD and County) 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 County with respect to BPA

1 Parcel) to which the BPA is assigned and include an updated version of **Exhibit “4”** as an  
2 attachment to its Annual Report. No Party may Pump Groundwater pursuant to BPA following  
3 October 1, 2020, until and unless (i) the Party has paid the full assessment assessed by  
4 Watermaster to fund the Watermaster through the first permanent Pumping Assessment in  
5 December 2021, and (ii) the Party is compliant with all orders of the Court, including without  
6 limitation, payment of all assessments or other monies owed to Watermaster or any other  
7 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 This Court acknowledges that the individual BPA established for each Party reflects the  
22 settlement and compromise of the Parties respecting water rights among them. Such water rights  
23 are a form of property right, subject to rights and restrictions pursuant to the reasonable and  
24 beneficial use doctrine set forth in Article X, section 2 of the California Constitution. The  
25 allocation of BPA among the Parties reflects a compromise of all water rights of all Parties to this  
26 action, which the Court finds to be equitable and consistent with applicable law. All Baseline  
27 Pumping Allocations are of equal priority.

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

6 **B. Carryover.** Unused Annual Allocation may be carried over for use in subsequent  
7 Water Years as Carryover if the Pumping Assessment is paid in the current year, subject to  
8 restrictions on the amount or duration of Carryover specified below. The initial maximum  
9 quantity of Carryover that a Pumper can accrue is two times the amount of BPA then held by that  
10 Pumper. Carryover will be re-evaluated by January 1, 2025, by Watermaster, with consultation  
11 of the Technical Advisory Committee. If Watermaster determines that it is necessary to adjust  
12 the amount of individual Carryover or the duration that Carryover may be held within the Basin  
13 to prevent Undesirable Results, the Watermaster shall so advise this Court through a noticed  
14 motion for a subsequent order amending this Judgment. Once Carryover is accrued pursuant to  
15 rules then in effect, the rules may not be changed as to the accrued Carryover (e.g., the rate or  
16 amount of loss may not be modified) because the Groundwater reflected in Carryover is treated,  
17 for purposes of Basin-wide production accounting, as if already Pumped and used. Accordingly,  
18 any Basin-wide need for reduced Pumping will be achieved through additional Rampdown of  
19 BPA rather than reduction of a Pumper's existing Carryover.

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

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

26 **Rights of State Park.(1)** In lieu of a grant of BPA to the State Park, the State  
27 Park will be authorized to Pump an annual maximum of 20 acre-feet of Groundwater for  
28 their uses. Such authorization is distinct from the Pumping rights of other Pumpers



1 pursuant to BPA. The State Park’s authorized Pumping pursuant to this Section III.D  
2 shall not be subject to Rampdown, and also shall not be eligible for Carryover, Lease, or  
3 subsequent transfer, and will be subject to all other relevant provisions of this Judgment  
4 including but not limited to payment of an assessment on each acre-foot of water pumped  
5 that is equivalent to the Pumping Assessments charged to Party’s Pumping BPA,  
6 consistent with Section IV.E(4).

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

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

<u>Water Year</u>	<u>Annual Rampdown Schedule</u>	<u>Cumulative Rampdown</u>
2020-2021	5% reduction of BPA	5%
2021-2022	5% reduction of BPA	10%
2022-2023	5% reduction of BPA	15%
2023-2024	5% reduction of BPA	20%
2024-2025	5% reduction of BPA	25%

25 **F. Process for Determining Sustainable Yield and Implementation of**  
26 **Subsequent Rampdown.** The amount and pace of Rampdown for the Water Years following the  
27 2024-2025 Water Year (i.e., commencing with the 2025-2026 Water Year) will be determined  
28 through the following process:

1           1.       By June 1, 2021, the Watermaster shall seek agreement with the Technical  
2       Advisory Committee on a scope of work and budget for technical work through September 30,  
3       2023. Any disputes as to scope or budget will be resolved on hearing and order pursuant to  
4       Section VII prior to the commencement of the Water Year beginning October 1, 2021. The  
5       choice to perform specific technical tasks will be informed by considering the value and  
6       importance of the work to attain a better understanding of the Basin and the goal of advancing  
7       Sustainable Groundwater Management in comparison to the cost of the work.

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

11          3.       By January 1, 2025, the Watermaster will, following receipt of input and  
12      recommendations from the Technical Advisory Committee, revise the determination of  
13      Sustainable Yield for Water Years 2025/2026 through 2029/2030 (the “Second Five-Year  
14      Period”). The revised determination of Sustainable Yield will consider all sources of  
15      replenishment, including return flows and underflows, and all outflows from the Basin, and will  
16      consider, among other data, information derived from updated runs of the BVHM. Any  
17      disagreement with Watermaster’s determination may be appealed to this Court for review, subject  
18      to the provisions of Section VII. The revised estimate of Sustainable Yield will determine the  
19      Rampdown Rate for the Second Five-Year Period as provided in Section III.F.5 of this Judgment.

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

24          5.       If the revised estimate of Sustainable Yield for the Second Five-Year  
25      Period exceeds or falls below 5,700 AFY, the Rampdown Rate will be reduced or increased, and  
26      the 2030 Target will be increased or reduced, proportional to the percentage that the revised  
27      estimate of Sustainable Yield exceeds or falls below 5,700 AFY, thus achieving a cumulative  
28

1 quantity of all Pumpers' Annual Allocation equal to the mid-point between the revised estimate  
2 of Sustainable Yield and the cumulative quantity of all Pumper's BPA by Water Year 2029-2030.

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

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

16 8. The annual Rampdown Rate for each Water Year of the Third Five-Year  
17 Period will be calculated to reduce the then cumulative allowed Pumping (i.e., cumulative Annual  
18 Allocation in effect for Water Year 2029-2030) over 10 years to equal the revised determination  
19 of Sustainable Yield by Water Year 2039-2040. Thus, the annual Rampdown Rate will be  
20 established by dividing the necessary ten-year cumulative Rampdown by ten.

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

25 10. By January 1, 2035, the Watermaster will, following receipt of input and  
26 recommendations from the Technical Advisory Committee, determine the revised estimate of  
27 Sustainable Yield for Water Years 2035/2036 through 2039/2040 (the "Fourth Five-Year  
28 Period"). The revised determination of Sustainable Yield will consider all sources of

1 replenishment, including return flows and underflows, and all outflows from the Basin, and will  
2 consider, among other data, information derived from updated runs of the BVHM. Any  
3 disagreement with Watermaster's determination may be appealed to this Court for review, subject  
4 to the provisions of Section VII(A). The revised estimate of Sustainable Yield will determine the  
5 Rampdown Rate for the Fourth Five-Year Period as described in Section III.F(11) of this  
6 Judgment.

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

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

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

23 1. Overproduction up to the Max Overproduction Limit (defined below), must  
24 be covered within one year of the Overproduction, either by using less allocation (under-Pumping  
25 the allowed Annual Allocation or applying Carryover) in the subsequent Water Year or by Lease  
26 or Permanent Transfer from another Party. If not covered by under-Pumping, Carryover, Lease,  
27 or Permanent Transfer in the subsequent Water Year, the Party will be assessed an  
28 Overproduction Penalty Assessment. In calculating Overproduction, any Carryover will be

1 applied first to the Party's production, then any Groundwater Pumped pursuant to a Lease, and  
2 then the Party's Annual Allocation, so that Overproduction does not occur until the Party has  
3 exceeded the sum of its Carryover, Leased Annual Allocation/Carryover, and its Annual  
4 Allocation. The first Groundwater produced by a Party during any Water Year will be deemed to  
5 be an exercise of any Carryover.

6           2.       During the first three Water Years (2020-2021 through 2022-2023; Water  
7 Years 1-3), no Party will be subject to an immediate Overproduction Penalty Assessment so long  
8 as such Party's total cumulative Overproduction in those Water Years does not exceed 20 percent  
9 of the Party's total cumulative Annual Allocation for those Water Years ("Max Overproduction  
10 Limit"). Any Party that engages in Overproduction in any of Water Years 1-3 that does not  
11 exceed the Max Overproduction Limit will be notified by the Watermaster of the amount of  
12 Overproduction annually during Water Years 1-3 following the end of Water Year. The Party  
13 engaging in Overproduction shall cover the cumulative quantity of its Overproduction occurring  
14 in Water Years 1-3 by the end of Water Year 5 (2024-2025) through either Carryover, reduced  
15 production below authorized Annual Allocation in Water Years 4 (2023-2024) and 5 (2024-  
16 2025), or through Lease or Permanent Transfer. If the Party has not covered its Overproduction  
17 from Water Years 1-3 by the end of Water Year 5 (September 30, 2025), an Overproduction  
18 Penalty Assessment will be assessed.

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

25           4.       The Watermaster has the authority to enforce the terms of this Judgment,  
26 including the Rules and Regulations and Physical Solution, which authority includes at a  
27 minimum, the enforcement authority granted to a GSA under Water Code section 10732.  
28 Notwithstanding the monetary limits in Water Code section 10732(a)(1), the Watermaster has

1 authority to establish an Overproduction Penalty Assessment, which will be no less than \$500 per  
2 acre-foot. All Overproduction Penalty Assessments will be used by Watermaster to fund either  
3 (i) acquisition of Annual Allocation to offset the Overproduction or (ii) its Watermaster Budget  
4 and thereby reduce the amount of funds that must be raised from the annual Pumping  
5 Assessment. Failure to pay the Overproduction Penalty Assessments will incur further  
6 enforcement terms, as permitted by law, including but not limited to the right of the Watermaster  
7 to seek injunctive relief and the right to lien real property for unpaid assessments.

8 **H. De Minimis Pumpers.** This Court finds that production of Groundwater by any  
9 person or entity owning real property overlying the Basin who is a De Minimis Pumper at the  
10 time of filing of the Complaint is not likely to significantly contribute to Undesirable Results to  
11 the Basin or any interest related to the Basin. Accordingly, this Judgment is not intended to  
12 regulate a Party that was Pumping Groundwater as a De Minimis Pumper at the time of filing of  
13 the Complaint, provided the Pumping by such De Minimis Pumper remains within the two acre  
14 foot ~~domestic use~~ limitations established in this Judgment and provided that such De Minimis  
15 Pumper does not seek to transfer their Pumping to another real property owned by another  
16 Person. All persons who are not Pumping as of the date of filing the Complaint who seek to  
17 initiate Pumping as a De Minimis Pumper in the future shall submit an application to the  
18 Watermaster and the Watermaster shall determine whether the proposed Pumping will contribute  
19 to or threaten to contribute to Undesirable Results or other interest related to the Basin, and the  
20 application shall be denied if it contributes to or threatens to contribute to Undesirable Results or  
21 other interest related to the Basin. Any such Watermaster determination may be appealed to the  
22 Court pursuant to the procedures described in Section VII, below. Notwithstanding any of the  
23 provisions of this Section III(H), to the extent this Court determines in the future that Pumping by  
24 De Minimis Pumpers has significantly contributed to or threatens to significantly contribute to  
25 Undesirable Results, this Court may regulate Pumping by De Minimis Pumpers as it deems  
26 prudent pursuant to its reserved jurisdiction provided in Section VII.

27 **I. BPA Transfer.** In the interest of advancing the effective and efficient  
28 management of the Basin and the policy of maximizing the beneficial use of the Basin's

1 Groundwater, consistent with Article X, section 2 of the California Constitution, all BPA may be  
2 Permanently Transferred or Leased, subject to the provisions of this Section III.I. Unless  
3 otherwise noted, all provisions within this Section III.I will be applicable to both Permanent  
4 Transfers and Leases.

5 1. Good Standing and Intervention Requirements. Permanent Transfers and  
6 Leases may only be completed in accordance with these rules by Parties to this Judgment in good  
7 standing (meaning both buyer and seller have paid all applicable Pump assessments, fees, charges  
8 or will do so prior to completion of the transfer, and are otherwise in compliance with this  
9 Judgment). A transferee who is not already a Party must intervene as a Party as a condition of  
10 completing any Lease or Permanent Transfer.

11 2. Anti-Speculation Provision. A buyer of BPA pursuant to a Permanent  
12 Transfer must own at least one acre overlying the Basin for every five acre-feet of BPA  
13 transferred to the buyer (the “Eligibility Requirement”). The “Anti-Speculation” provisions of  
14 this paragraph do not apply to BWD, the County, or an owner of an Original BPA Parcel so long  
15 as either (i) the BPA owner retains the same or greater quantity of acreage in proportion to its  
16 Original BPA or (ii) the BPA owner does not hold an amount of Annual Allocation in excess of  
17 the quantity of its originally granted BPA. As a condition of completing a Permanent Transfer,  
18 the Watermaster may demand that a BPA buyer (excepting BWD, the County and an owner of an  
19 Original BPA Parcel satisfying the criteria specified above) submit a deed reflecting the buyer’s  
20 ownership in fee duly recorded, or Court order evidencing ownership by the buyer, of a legal  
21 parcel or parcels overlying the Basin of sufficient acreage to satisfy the buyer’s satisfaction of the  
22 Eligibility Requirement (the “Eligibility Proof”).

23 a. For purposes of establishing the Eligibility Proof, a buyer may  
24 show the requisite ownership of a legal parcel or parcels overlying the Basin to satisfy the  
25 Eligibility Requirement held in the name of the buyer, a subsidiary of the buyer where the buyer  
26 possesses at least a 51% ownership interest, or an affiliate of the buyer that has at least 51%  
27 common ownership with the buyer.

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

13           4.     Transfer Records. Except for the BWD, a mutual water company, and the  
14 County, upon completion of the Permanent Transfer, the BPA will be assigned to the buyer’s  
15 Parcel(s) on the records of the Watermaster.

16           5.     Restrictions on Transfers. In order to protect the Basin and protect against  
17 Undesirable Results, the Watermaster, with input from the Technical Advisory Committee, may  
18 restrict Permanent Transfers and Leases to specific areas of the Basin based on reasonable,  
19 evidenced-based concern that the Permanent Transfer or Lease will cause or exacerbate  
20 Undesirable Results, and then only in a manner that is equitable to all affected Pumpers.

21           6.     BPA Transfers with Land Conveyances. With respect to a conveyance of a  
22 fee interest to a BPA Parcel or any portion thereof, the associated BPA will automatically transfer  
23 to the successor of said BPA Parcel unless: (i) the deed, or comparable instrument, conveying  
24 such BPA Parcel expressly excludes the BPA from the conveyance and provides that the BPA is  
25 retained by the conveying Party; and (ii) the conveying owner (grantor) records a “water rights  
26 restrictive covenant” against the parcel being conveyed with the San Diego County Recorder in a  
27 form substantially similar to the applicable example provided in Exhibit “6” to this Judgment  
28 (“Water Rights Restrictive Covenant”) specifying the amount of BPA retained by the grantor (all



1 or a portion) and subsequently delivers a copy of the recorded Water Rights Restrictive Covenant  
2 to the Watermaster. Such conveyed parcel will thereafter only be benefited by any residual BPA  
3 not retained by the grantor, and if all BPA is retained by the grantor, the conveyed parcel will  
4 cease to be benefited by BPA, and thus will no longer be a BPA Parcel, unless BPA is  
5 subsequently acquired and designated for the benefit of such parcel through a Lease or Permanent  
6 Transfer. Such Water Rights Restrictive Covenant must include a covenant prohibiting the future  
7 Pumping of Groundwater from the conveyed parcel in excess of any residual BPA not retained by  
8 the grantor, unless BPA is subsequently acquired for the benefit of that parcel. Within thirty days  
9 of the conveyance of a BPA Parcel with assigned BPA, the successor in interest to such BPA  
10 Parcel shall provide written notice to the Watermaster of the transfer of the BPA Parcel, and in  
11 the event the grantor has retained any BPA, a copy of the Water Rights Restrictive Covenant  
12 specifying the amount of BPA retained by the grantor. If grantor has retained any BPA consistent  
13 with the terms of this Section, the Water Rights Restrictive Covenant must identify the parcel(s)  
14 and wells(s) to which the retained BPA is to be subsequently assigned by the grantor.

15 7. Compliance with Watermaster Review and for Permanent Transfers.

16 Except for a Permanent Transfer of BPA concurrently with the transfer of a BPA Parcel or a  
17 Permanent Transfer of a Party's BPA to other overlying parcels owned by that Party or its  
18 affiliates, all Permanent Transfers must be reviewed and approved by Watermaster prior to  
19 closing to consider the means by which Groundwater use will be permanently reduced to  
20 facilitate the Permanent Transfer of BPA and to confirm satisfaction of the Eligibility  
21 Requirements (Sections III.I(2) 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 the Seller must record a Water Rights Restrictive Covenant against the BPA Parcel with the San  
27 Diego County Recorder and subsequently deliver a copy of the recorded Water Rights Restrictive  
28 Covenant to the Watermaster. The Water Rights Restrictive Covenant must specify the amount

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

8 9. Required Notices to Watermaster.

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

20 b. Permanent Transfers. A Permanent Transfer will only be effective  
21 after a written notice has been received by Watermaster, signed by both Parties to the Permanent  
22 Transfer, specifying the amount of BPA permanently transferred; the new BPA Parcel and well(s)  
23 to which the transferred BPA is to be assigned (excepting the BWD and County with respect to  
24 BPA Parcel); and certifying that the conditions in Sections 6 and 7 above have been satisfied;  
25 and, except for a transfer of BPA concurrently with the transfer of fee title to an Original BPA  
26 Parcel or a transfer of a Party's BPA to other overlying parcels owned by that Party (see  
27 Subsection D.5), no Permanent Transfer will be effective until the Seller has obtained approval  
28 from Watermaster for the sale of the BPA following Watermaster review.

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

6 10. Transfer Costs. All costs of transfers (including costs of any fallowing  
7 remediation) will be borne by the Parties to the transfer transaction, not by Pumping Assessments.  
8 Likewise, enforcement costs will be borne by the Parties to the transfer with the ability for the  
9 prevailing party to recoup its legal costs from the non-prevailing party. If the Watermaster is the  
10 prevailing party in a Watermaster enforcement action, the Watermaster may recoup its legal costs  
11 from the non-prevailing party. If the Watermaster is not the prevailing party in a Watermaster  
12 enforcement action, the Watermaster will provide for the payment of the costs and expenses of  
13 the Watermaster from the Watermaster Budget.

14 11. Temporary Assignments. Temporary assignment of Annual Allocation (for  
15 up to six months of use, which period may be extended for cause upon application to and  
16 approval of the Watermaster) will be allowed for well sharing during well maintenance and  
17 emergencies, which will be documented by the Parties to the well sharing and a notice signed by  
18 both Parties submitted to the Watermaster within 30 days of use for accounting on Watermaster  
19 records identifying the nature of the emergency necessitating the temporary assignment, and the  
20 BPA Parcels and wells to which the Annual Allocation is assigned.

21 **J. Fallowing Standards**

22 1. Applicable Standards. For the purposes of avoiding blight associated with  
23 dead agricultural vegetation and to reduce potential air quality and public health impacts from  
24 wind-blown dust, if all or any portion of BPA is to be permanently transferred to another Party by  
25 way of permanently fallowing any portion of a Party's irrigated tree crop, the portion permanently  
26 retired from irrigation will follow any and all County standards as may be promulgated under the  
27 County's land use authority, including any standards imposed under any applicable CEQA  
28 document, as may apply. Provided, however, that the Minimum Fallowing Standards described

1 in Exhibit “3” shall serve as the minimum following standards, as supplemented by any County-  
2 imposed following standards.

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

17           3.     Following Standards Applicable to Multi-Year Leases. To the extent the  
18 Watermaster determines that a multi-year Lease of BPA has resulted in significant amounts of  
19 dead trees or other crops on the land of the lessor Party and that the following standards described  
20 in Section III.J(1). have been disregarded or not met for a period of at least 24 months, the  
21 Watermaster shall have authority to seek a Court order to compel following or impose a monetary  
22 assessment to undertake following. Watermaster will be entitled to recover its costs and  
23 attorney’s fees from the lessor Party should Watermaster be a prevailing Party in such action.  
24 The provisions of this Subsection III.J(3) shall not apply to cover crops described in the  
25 Minimum Following Standards attached as Exhibit “3” nor customary farming practices on the  
26 lessor property.

27           4.     Following and Water Credits. ~~Water credits issued by BWD and/or the~~  
28 ~~County pursuant the BWD’s Demand Offset Mitigation Water Credits Policy (revised May 19,~~

1 ~~2015) have been converted to BPA, as reflected in Exhibit 4 to this Judgment~~Annual Allocation  
2 associated with BPA that is granted in relation to a conversion of water credits may not be  
3 exercised (i.e., Groundwater may not be Pumped pursuant to the BPA) nor the underlying BPA  
4 transferred until and unless (a) the following standards set forth in this Judgment have been  
5 satisfied for the parcel(s) from which such water credits were generated, as approved by  
6 Watermaster, and (b) a restrictive covenant limiting Groundwater production on such parcel(s) was  
7 recorded as part of the water credits program, and if that was not recorded, then a new Water  
8 Rights Restrictive Covenant is recorded against such parcel(s). Within six (6) months of its  
9 formation, the Watermaster shall review the ~~parcels from which such water credits were~~  
10 ~~generated~~state of satisfaction of requirements (a) and (b) and issue ~~an eligibility for~~  
11 ~~exercise/transfer~~a status letter to each applicable ~~parcel owner and the water credit holder.~~ ~~Before~~  
12 ~~the BPA/Annual Allocation associated with such former water credits may be exercised (i.e.,~~  
13 ~~groundwater Pumped pursuant to the BPA) or transferred, the following standards described in~~  
14 ~~the Judgment must have been satisfied, as approved by Watermaster, and a Water Rights~~  
15 ~~Restrictive Covenant recorded against the parcels from which such water credits were generated.~~  
16 ~~The BPA holder shall then elect the~~BPA holder informing them that these requirements have  
17 been met or what further action is necessary to satisfy these requirements. When the  
18 requirements are met, the BPA holder shall then update, if needed, the parcels (identified by  
19 assessor parcel numbers) and well(s) (identified by state well number(s)) to which the BPA ~~will~~  
20 ~~be~~is assigned and request necessary changes to Exhibit "4". Notwithstanding the foregoing, if  
21 the BPA holder meets the requirements of this Section J(4) upon or after receipt of the transfer  
22 status letter, such BPA holder will have all rights and be burdened with all responsibilities  
23 attendant to the BPA, including Carryover accrual, retroactively to the date of this Judgment.

24 **K. Available Groundwater Storage Capacity**

25 There exists in the Basin a substantial amount of available Groundwater storage capacity which is  
26 not utilized for storage or regulation of Groundwater. Such storage capacity can appropriately be  
27 utilized for storage and conjunctive use of water that may in the future be imported to the Basin.  
28 It is essential that such storage capacity utilization be undertaken only under Watermaster control

1 and regulation, in order to protect the integrity of the Basin, its Groundwater and any water  
2 imported to the Basin. Accordingly, any Person who wishes to store and Pump imported water in  
3 the Basin must do so pursuant to a storage agreement with Watermaster. All storage and export  
4 of imported water in the Basin is enjoined and restrained except pursuant to agreement with  
5 Watermaster. In the allocation of Basin storage capacity, the needs and requirements of lands  
6 overlying the Basin and of the holders of BPA shall have priority and preference over storage for  
7 export.

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

9 Parties may change the point of Pumping on their real property for any BPA to another point of  
10 Pumping on the same Party's real property so long as such change of point of Pumping does not  
11 cause Undesirable Results or interfere with an existing well of another Party.

12 **IV. BASIN ADMINISTRATION**

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

18 **B. Watermaster Board**

19 1. **Composition and Selection.** The Watermaster Board will be comprised of  
20 five members, with each member having one vote, as follows: one representative and one  
21 alternate selected by BWD; one representative and one alternate selected by the County; one  
22 representative [of the agricultural sector Parties](#) and one alternate selected by the San Diego  
23 County Farm Bureau; one representative and one alternate selected by the recreational sector  
24 Parties; one public/community representative and one alternate. The Parties within the  
25 recreational sector and the process for selecting the recreational and public/community  
26 representatives are specified in **Exhibit "7."** Any Watermaster Board member or alternate may be  
27 removed by the Court for cause. Any vacancy on the Watermaster Board shall be filled by the  
28 same procedure used in the appointment of the vacant seat.

1           2.     Decisions of the Watermaster. Except for decisions concerning a subject  
2 matter for which a Supermajority Vote is required for approval, as specified in Section IV.B(3)  
3 below, a decision agreed to by a majority of the Watermaster Board made when a quorum is  
4 present will be a decision of the Watermaster; provided, however, that no action of the  
5 Watermaster Board shall become effective without the affirmative vote of at least three members  
6 of the Watermaster Board. A quorum constitutes ~~3/5th~~three members of the Board. All  
7 Watermaster decisions are final when made and may be appealed to this Court pursuant to  
8 Section VII.

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

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

19           4.     Watermaster Board Meetings. All Watermaster Board meetings and  
20 hearings must be conducted in substantial accordance with the requirements of the California  
21 open meeting laws under Government Code sections 54950 et seq., otherwise known as the  
22 “Brown Act”. Provided, however, that notwithstanding Government Code, section 54953(b)(3),  
23 at least two of the Watermaster Board members shall participate in Board meetings from  
24 locations overlying the Basin. Further, because the Watermaster Board acts under the authority  
25 of the Superior Court and does not qualify as a “local agency” under Government Code section  
26 54951, any and all challenges to Brown Act compliance by the Watermaster Board may be heard  
27 only by the Superior Court Judge with continuing jurisdiction over the Judgment in the  
28 underlying action, in compliance with the requirements of the Judgment. Regular Watermaster

1 meetings must be noticed with an agenda and supporting materials made available to the public at  
2 least three days prior to the meeting, and shall be open to the public in a public location that  
3 overlies the Basin. Meeting minutes must be taken of all Watermaster Board meetings, a copy of  
4 which must be furnished to any member of the public requesting such minutes.

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

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



1           **E. Watermaster Powers and Responsibilities.**

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

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

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

<u>Completion Deadline</u>	<u>Action</u>
June 30 <sup>1</sup>	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
August 30	Mediation of any challenge to the budget is completed pursuant to Section VII.A(1)
October 15	Any challenge to the budget by a Party unresolved by mediation will be heard by the Court

27 \_\_\_\_\_  
28 <sup>1</sup> 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	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. 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
2		
3		
4		
5		
6	October 31	Court order is entered on any Party’s challenge to budget heard by the Court
7		
8	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.
9		
10		
11	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
12		
13	December 31	First installment of Pumping Assessment due
14	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
15		
16	June 30	Second installment of Pumping Assessment due

17

18           4.     Pumping Assessments. The annual Watermaster Budget costs in excess of

19 applicable grants, loans, any Overproduction Penalty Assessment funds elected by Watermaster

20 to be applied to the Watermaster Budget (i.e. any such funds not used to Lease Annual Production

21 to offset the Overproduction), and assessments levied and collected on the State Park ~~for its~~and

22 the Borrego Springs Unified School District for their Pumping will be funded by a uniform

23 “Pumping Assessment”. To determine each Party’s Pumping Assessment, Watermaster will first

24 determine for each Party an “Adjusted Pumping Calculation,” which will equal the Amount of

25 Annual Allocation Pumped by the Party during the preceding Water Year (or by the Party’s lessee

26 if the Party has Leased any portion of its Annual Allocation to another Party), minus the amount

27 of Carryover Pumped during the preceding Water Year<sup>2</sup> by the Party (or any lessee of the

28 <sup>2</sup> There will be no Carryover Pumped during the 2020-2021 Water Year because this will be the first Water Year with Annual Allocations.

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

25           5.     Annual Report

26           a.     Process. The Watermaster shall file an Annual Report with this  
27 Court not later than February 1 of each Water Year beginning February 1 following the first full  
28 Water Year after entry of Judgment. Prior to filing the Annual Report with this Court,

1 Watermaster shall notify all Parties that a draft of the Annual Report is available for review and  
2 shall provide notice of a hearing to receive comments and recommendations for changes in the  
3 report. The notice of hearing may include such summary of the draft report as Watermaster may  
4 deem appropriate. Watermaster shall also distribute the Annual Report to the Parties requesting  
5 copies and file it with DWR.

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

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

23 7. Meetings with the Technical Advisory Committee. The Watermaster shall  
24 meet on a regular basis and at least semi-annually with the Technical Advisory Committee to  
25 review Watermaster activities pursuant to this Judgment and to receive advisory  
26 recommendations from the Technical Advisory Committee.Unauthorized Pumping. The  
27 Watermaster shall undertake any action, including bringing any motion to the Court, necessary to  
28 enjoin unauthorized Pumping.

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

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

14           **F.     Technical Advisory Committee**

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

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

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

16     **V.     ASSESSMENTS**

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

19                   1.     Pumping Assessment. The Watermaster shall provide an invoice for the  
20 assessed Pumping Assessment to each Party pursuant to the schedule set forth in Section IV.E(3).  
21 Each Party who does not timely notify Watermaster of their election to forego Pumping and  
22 Carryover of its Annual Allocation in the ensuing Water Year will be liable for the payment of  
23 such invoice regardless of whether they subsequently Lease or Permanently Transfer part or all of  
24 their Annual Allocation during that Water Year. An appeal of the Watermaster’s calculation of  
25 any Pumping Assessment must be brought pursuant to Section VII of this Judgment within thirty  
26 (30) days of receipt of Watermaster’s invoice. Payment of any Pumping Assessment appealed to  
27 the Court must be made within ten (10) days following the Court order on appeal. If payment is  
28

1 not made on or before the applicable due date, the Watermaster will add a penalty of one percent  
2 (1%) per month thereof to such Party's statement.

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

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

## 21 **VI. WELL METERING AND WATER QUALITY TESTING**

### 22 **A. Meter Installation for the Purpose of Accurately Measuring Water Use.**

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

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

6 **B. Water Quality Monitoring Plan**

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

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



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 ~~Judgement~~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~~Disagreement shall first engage in  
23 mediation, which mediation will extend the Court hearing date for up to sixty (60) days while the  
24 mediation is pending. Unless otherwise provided for herein or the Parties in Disagreement agree  
25 otherwise, the mediation will be initiated and conducted under the applicable rules of the  
26 American Arbitration Association that are applicable as of the date of the dispute. The mediation  
27 will be limited to one full day unless extended by the Parties in ~~disagreement~~Disagreement. The  
28 Parties in Disagreement participating in any such mediation will be responsible for their own

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

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

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

12           **B.       Watermaster Enforcement.** Watermaster (as well any Party upon Watermaster's  
13 failure or refusal to enforce) may petition this Court to issue enforcement orders, upon noticed  
14 motion and after hearing, as necessary to remedy any non-compliance with the terms of this  
15 Judgment. Watermaster is also authorized to coordinate with the County in connection with  
16 County enforcement of land use and nuisance ordinances related to following.

## 17 **VIII. FINDINGS**

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

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

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

25           **D.**       Plaintiff complied with the service and notice provisions of Code of Civil  
26 Procedure sections 835 and 836, which compliance is deemed effective service of process of the  
27 Complaint and notice on all interested parties of the Comprehensive Adjudication of the Basin for  
28

1 purposes of establishing in rem jurisdiction and the comprehensive binding effect of the  
2 Comprehensive Adjudication, consistent with Code of Civil Procedure sections 836(j) and 851.

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

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

17  
18  
19 **IX. BINDING EFFECT**

20 The Judgment is binding on the Parties to the Comprehensive Adjudication and all their  
21 successors in interest, including, but not limited to, heirs, executors, administrators, assigns,  
22 lessees, licensees, the agents and employees of the Parties to the Comprehensive Adjudication  
23 and all their successors in interest, and all landowners or other persons claiming rights to Pump  
24 Groundwater from the Basin, consistent with Code of Civil Procedure section 851. The Judgment  
25 also is an in rem judgment binding on all real property overlying the Basin. The Watermaster  
26 may cause this Judgment to be recorded against any or all parcels overlying the Basin. The seller  
27 of any real property subject to this Judgment shall notify the purchaser of the existence of the  
28 Judgment and its binding effect on the real property.

1 **X. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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**Exhibit "1"**  
Groundwater Management Plan  
Filed Under Separate Cover

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**Exhibit "2"**

Stipulation

Attached

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**Exhibit “3”**

Minimum Fallowing Standards

- All agricultural tree crops shall be destroyed (e.g., chipped or burned).
- All land where the crops were destroyed shall be stabilized (e.g. mulched with the resulting tree crop chippings or ash, planted with rye grass, barley or other acceptable cover crop, application of other product to aid in dust abatement, or combination thereof).
- All irrigation wells not used for irrigation of other property, for monitoring or for other allowable purposes shall be properly abandoned, converted to monitoring wells, or otherwise exempted under applicable County standards.
- All above ground irrigation lines/piping shall be permanently removed.
- All hazardous materials (e.g., drums of used oil) will be removed from the fallowed site.





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**Exhibit "5"**  
Watermaster Rules and Regulations  
Attached

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**Exhibit "6"**

Water Rights Restrictive Covenant Forms

Attached

1 Exhibit "7"

2 Process for Selecting Watermaster Public/Community Representative

3 Current representatives on the GSP Advisory Committee, as of June 1, 2019, representing  
4 BWD Ratepayers, Borrego Springs Community Sponsor Group, Anza-Borrego Desert State Park,  
5 and Borrego Valley Stewardship Council shall nominate a minimum of two candidates and  
6 preferably three candidates, and the Borrego Unified School District shall nominate ~~a fourth~~one  
7 candidate, to serve as the potential public/community representative for the Watermaster. The  
8 public representative will be at a minimum (i) a full-time resident of Borrego Springs for at least  
9 nine months of the year, (ii) a Borrego voter living on real property overlying the Subbasin,  
10 (iii) a community member as opposed to a government agency employee, and (iv) familiar with  
11 the Judgment and Groundwater Management Plan. ~~The other four~~BWD shall conduct a public  
12 forum during which members of the Watermaster ~~will choose the public representative and an~~  
13 ~~alternate from the candidates presented.~~Board may ask questions of the candidates. Members of  
14 the public may also ask questions of the candidates during such forum. After the conclusion of  
15 the public forum, the BWD shall select the community representative from among the candidates  
16 during the open session of a public meeting of the BWD Board of Directors.

17 If, for any reason, one of the selecting organizations cease to exist, the other selecting  
18 organizations described herein may ask another public entity with community-wide planning  
19 interests to participate in the selection of the slate of candidates.

20 If for any reason the selection of a slate of candidates or the selection of a public  
21 representative as described above cannot be made, the Court shall appoint a full-time resident of  
22 Borrego Springs for at least nine months of the year who is also a voter living on real property  
23 overlying the Subbasin to represent the public on the Board. However, in no circumstance shall  
24 this appointed member be a current member of the BWD Board or BWD staff.



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**Exhibit "8"**  
Entry Agreement Form  
Attached

<b>Summary report:</b>	
<b>Litéra® Change-Pro TDC 10.1.0.400 Document comparison done on 1/3/2020 12:35:25 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> v1 Stipulated Judgment (11-15-19).docx	
<b>Modified DMS:</b> dm://IRVLIB/1469429/1	
<b>Changes:</b>	
<u>Add</u>	77
<del>Delete</del>	64
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	1
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>142</b>