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[EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103](#)

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF ORANGE

17 [BORREGO WATER DISTRICT,](#)

18 Plaintiff,

19 v.

20 [ALL PERSONS WHO CLAIM A RIGHT TO
21 EXTRACT GROUNDWATER IN THE
22 BORREGO VALLEY GROUNDWATER
23 SUBBASIN NO. 7.024-01 WHETHER
24 BASED ON APPROPRIATION,
25 OVERLYING RIGHT, OR OTHER BASIS
26 OF RIGHT, AND/OR WHO CLAIM A
27 RIGHT TO USE OF STORAGE SPACE IN
28 THE SUBBASIN; et al.,](#)

~~Defendant~~ [Defendants.](#)

Case No. [37-2020-00005776](#)
Judge: [Peter J. Wilson](#)
Dept. [CX102](#)

[STIPULATED JUDGMENT](#)

[Complaint Filed: January 30, 2020](#)
[Trial Date: None Set](#)

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1 effective December 31, 2019. The Stipulating Parties represent to this Court that the optimal
2 means of achieving Sustainable Groundwater Management for the Basin consistent with the
3 directives of SGMA and Article X, section 2 of the California Constitution, and to achieve a
4 durable solution to alleviate the significant Overdraft now occurring in the Basin, is by way of this
5 Comprehensive Adjudication of Groundwater rights, the substitution of the Watermaster in place
6 of the GSA and the substitution of this Judgment as an alternative to a GSP under SGMA as
7 approved by the Department and as authorized by Water Code sections 10733.6 and 10737.4.
8 BWD filed the Complaint in this action, pursuant to the Stipulation among the Stipulating Parties,
9 to undertake the Comprehensive Adjudication of Groundwater rights of the Basin pursuant to
10 sections 830 et seq. of the Code of Civil Procedure and so comply with SGMA. Upon entry of
11 this Judgment establishing the Watermaster, BWD is to withdraw as a GSA by notifying the
12 Department under Water Code section 10723.8(e).

13 **E. Notice of Commencement of Groundwater Basin Adjudication.** A Notice of
14 Commencement of Groundwater Basin Adjudication with the information required by Section 836
15 of the Code of Civil Procedure was lodged with the Court on **[DATE]** [February 4, 2020](#).

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

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

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

1 real property differed from the mailing address of the holder of fee title, the Notice, Complaint,
2 and Form Answer were mailed by registered or certified mail, return receipt requested, to the
3 physical address of the real property and the mailing address of the holder of fee title. The notice
4 was also published at least once per week for four consecutive weeks in one or more newspapers
5 of general circulation in the County on all persons interested in the proceeding, consistent with
6 Code of Civil Procedure section 835 and orders of this Court. A notice of completion of mailing
7 was filed with the Court on [DATE] [December 29, 2020](#), consistent with Code of Civil Procedure
8 section 836.

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

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

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

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

28

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

3 7. Basin – Borrego Springs Subbasin of the Borrego Valley Groundwater
4 Basin as defined by California Department of Water Resources (DWR) Bulletin No. 118 as
5 Subbasin No. 7-024.01. The boundaries of the Basin are set forth in DWR Bulletin 118, Subbasin
6 No. 7-024.01.

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

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

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

17 11. BWD – Borrego Water District.

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

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

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

26 15. Comprehensive Adjudication – An action filed in superior court to
27 comprehensively determine rights to extract groundwater in a basin. (Code Civ. Proc., § 832(c).)
28

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

- 1 30. GSA – Groundwater Sustainability Agency as defined by Water Code
2 section 10721(j).
- 3 31. GSP – Groundwater Sustainability Plan as defined by Water Code section
4 10721(k).
- 5 32. Lease – A transfer of Annual Allocation or Carryover for one Water Year
6 or for several Water Years, as set forth in a written lease agreement.
- 7 33. Management Areas – The North, Central and Southern areas of the Basin,
8 as described in the GMP.
- 9 34. Minimum Following Standards – As defined in Exhibit “3”.
- 10 35. Max Overproduction Limit – As defined in Section III.G(2).
- 11 36. Original BPA Parcel – A parcel of land listed in Exhibit “4” to which BPA
12 was originally granted.
- 13 37. Overdraft – The sustained cumulative Pumping of Groundwater from the
14 Basin in quantities that exceed the Basin’s Sustainable Yield.
- 15 38. Overproduction – Pumping by a Party in any particular Water Year in
16 excess of the sum of the Party’s Annual Allocation and any leased Annual Allocation for that
17 Water Year plus any accrued Carryover.
- 18 39. Overproduction Penalty Assessment – A penalty fee for Overproduction.
- 19 40. Party (Parties). Any Person(s) that has (have) been named and served or
20 otherwise properly joined, or has (have) become subject to this Judgment of this Court and all
21 their respective heirs, successors-in-interest and assigns.
- 22 41. Parties in Disagreement – As defined in Section VII (A)(1)).
- 23 42. Permanent Transfer – A transfer of BPA, including any portion of a Party’s
24 total BPA, which will be permanently added to the buyer’s grantee’s cumulative BPA and
25 subtracted from the seller’s grantor’s BPA, and when multiplied by the Pumping Percentage will
26 establish additional Annual Allocation of the buyer grantee in each Water Year (less any water
27 Pumped in that year by the selling Party) and thereafter.
- 28

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

4 44. Physical Solution – The terms of this Judgment, including the GMP,
5 attached hereto as **Exhibit “1,”** which are intended to achieve Sustainable Groundwater
6 Management for the Basin consistent with the substantive objectives of SGMA and Article X,
7 section 2 of the California Constitution, and which may be modified over time in compliance with
8 the procedures described herein.

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

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

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

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

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

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

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

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

26 53. SGMA – The Sustainable Groundwater Management Act set forth at
27 California Water Code sections 10720 et seq.
28

- 1 54. State Park – The Anza Borrego Desert State Park.
- 2
- 3 55. Supermajority Vote – An affirmative vote of no less than four members of
4 the Watermaster Board.
- 5 56. Sustainable Groundwater Management – Management of the Basin and
6 Pumping and use of Groundwater from the Basin in a manner that can be maintained during the
7 Planning and Implementation Horizon without causing Undesirable Results, consistent with
8 SGMA₂ (Wat. Code, § 10721(v).)
- 9 57. Sustainable Yield – The maximum quantity of water, calculated over a base
10 period representative of long-term conditions in the Basin that can be cumulatively Pumped on an
11 annual basis from the Basin without causing an Undesirable Result, consistent with SGMA₂ (Wat.
12 Code, § 10721(w)).
- 13 58. Technical Advisory Committee – The advisory body established pursuant to
14 Section IV.G(1) of this Judgment to study technical aspects of the Basin and to issue
15 recommendations to Watermaster based on such technical study for the purpose of achieving
16 Sustainable Groundwater Management in the Basin in an effective and efficient manner, consistent
17 with the rights and obligations of the Parties established by this Judgment.
- 18 59. Third Five-Year Period – Water Years 2030/2031 through 2034/2035.
- 19 60. Undesirable Results – As defined by Water Code section 10721(x).
- 20 61. Water Budget – An accounting of the total Groundwater and surface water
21 entering and leaving the Basin including the changes in the amount of water stored consistent with
22 SGMA₂ (Wat. Code, § 10721(y).)
- 23 62. Watermaster – The special master to this Court appointed pursuant to
24 Section IV.A of this Judgment for the purpose of executing the powers, duties, and
25 responsibilities assigned therein.
- 26 63. Watermaster Board – The five-member Board governing the Watermaster
27 as defined in Section IV.B.
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64. Watermaster Budget – The budget to fund the operation and administration of the Watermaster, and programs undertaken by, or on behalf of Watermaster, which will be prepared annually by Watermaster consistent with the provisions of Section IV.E(3) of this Judgment.

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

66. Water Rights Restrictive Covenant – As defined in Section III.I(76).

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

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

- Exhibit “1”** Groundwater Management Plan
- Exhibit “2”** Stipulation
- Exhibit “3”** Minimum Following Standards
- Exhibit “4”** Baseline Pumping Allocations
- Exhibit “5”** Watermaster Rules and Regulations
- Exhibit “6”** Water Rights Restrictive Covenant Forms
- Exhibit “7”** Process for Selecting Watermaster Public/Community Representative, Process for Selecting Watermaster Recreational Sector Representative, and Process for Selecting Watermaster Agricultural Sector Representative
- Exhibit “8”** Entry Agreement Form
- Exhibit “9”** [Facility Standards for Mutual Water Companies Formed After Entry of Judgment.](#)

C. Construction. Unless the context clearly requires otherwise:

1. The plural and singular forms include the other;
2. “Shall,” “will,” and “must” are each mandatory;
3. “May” is permissive;

1 4. “Or” is not exclusive; and

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

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

6 **II. PHYSICAL AND LEGAL SETTING**

7 **A. Complexity and Scope of Action.** The physical and legal issues of this case are
8 complex. Pumping of ~~more than~~ ~~those~~ persons Pumping Groundwater from the Basin has
9 been ascertained. In excess of ~~4,000 persons~~ 4,500 owners of land overlying the Basin
10 ~~served~~ provided notice. The Groundwater rights of the entire Basin have been brought into issue
11 and the action has been made a full in rem adjudication of water rights to the Basin as to all real
12 property owners in the Basin pursuant to Sections 830 et seq. of the Code of Civil Procedure.

13 **B. Basin as Common Source of Supply.** The area of the Basin is defined by Bulletin
14 118 issued by the Department of Water Resources and identified by Bulletin 118 as Subbasin No.
15 7-24.01. The Groundwater within the Basin constitutes a common source of supply to the Parties
16 herein and the Borrego Springs community.

17 **C. Overdraft and Need for Physical Solution.** The Basin has been, and presently is,
18 in a condition of long-term Overdraft for a period longer than ten years consistent with Code of
19 Civil Procedure sections 832(d) and 847(a). There is presently no viable means to cure the
20 Basin’s Overdraft through artificial recharge or other supply augmentation strategy under current
21 Basin conditions and cumulative average annual Pumping quantities. Therefore, it is necessary,
22 and consistent with applicable law, to implement the Physical Solution set forth in this Judgment
23 inclusive of the prescribed Rampdown over time. The Physical Solution takes into consideration
24 the unique physical and climatic conditions of the Basin, the use of water within the Basin, the
25 character and rate of return flows, the character and extent of established uses, and the current
26 lack of availability of imported water. This Court has received evidence to support its conclusion
27 that the Physical Solution appropriately balances competing economic, social, and environmental
28

1 considerations, and that it will result in the optimal management of the Basin consistent with
2 Article X, section 2 of the California Constitution.

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

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

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

23 **G. Pumping Groundwater Only Pursuant to Judgment.** This Judgment, and the
24 Physical Solution decreed herein, addresses all Groundwater rights of the Basin. Any Pumping
25 inconsistent with this Judgment will frustrate efforts to achieve Sustainable Groundwater
26 Management and public, environmental, and economic interests in the Basin, injure the rights of
27 all Parties, and interfere with the Physical Solution. Therefore, each and every Party, its officers,
28

1 agents, employees, successors, and assigns, is enjoined and restrained from Pumping
2 Groundwater from the Basin except pursuant to the provisions of this Judgment. Should
3 Watermaster become aware of any unauthorized Pumping, it shall promptly bring a motion before
4 this Court to enforce the terms of this Judgment pursuant to Section IV.E(9).

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

6 **A. Pumping Rights.** The BPA of each Party is as set forth in Exhibit “4.” Exhibit
7 “4” also identifies the legal parcel(s) to which the BPA attaches (excepting the BWD and
8 ~~County~~mutual water companies) and the well(s) to which the BPA is assigned.

9 If BPA is transferred to one or more new BPA Parcels and wells pursuant to a Permanent
10 Transfer, Watermaster will update Exhibit “4” to identify the reallocated BPA to each Party to
11 the transfer, new BPA Parcel(s) and well(s) (excepting the BWD and ~~County~~mutual water
12 companies with respect to BPA Parcel) to which the BPA is assigned and include an updated
13 version of Exhibit “4” as an attachment to its Annual Report. No Party may commence Pumping
14 Groundwater pursuant to BPA following October 1, 2020, until and unless (i) the Party has paid
15 the full assessment assessed by Watermaster to fund the Watermaster through the first permanent
16 Pumping Assessment in December 2021, and (ii) the Party is compliant with all orders of the
17 Court, including without limitation, payment of all assessments or other monies owed to
18 Watermaster or any other Party(ies) pursuant to order of the Court.

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

26 All water credits issued by BWD and/or the County pursuant to the BWD’s Demand
27 Offset Mitigation Water Credits Policy (revised May 19, 2015) have been converted to BPA and
28 are included in Exhibit “4”, unless otherwise agreed to by the water credit holder and BWD and

1 approved by the Court. To the extent a former water credit holder no longer owns real property
2 overlying the Basin at the time of this Judgment, the associated BPA is held in abeyance, in the
3 name of such owner until the BPA is attached to a specific legal parcel pursuant to the Judgment.

4 The basis for the amount of each Party's BPA set forth in **Exhibit "4"** to the Judgment is
5 as follows: (i) for the BWD, a compromise amount agreed upon among the Parties that is based
6 on metered data and water credit conversion; (ii) for Parties that previously held water credits
7 pursuant to the BWD's Demand Offset Mitigation Water Credits Policy (revised May 19, 2015),
8 the amount of BPA calculated based on a conversion factor taking into account water credit
9 type, formerly irrigated acreage, and relevant crop types of the formerly irrigated agricultural
10 acreage; and (iii) for all other Parties granted BPA, the amount of BPA specified in a final letter
11 addressed to each Party from Jim Bennett, Water Resources Manager for the County's Planning
12 and Development Services, which the GSA intended to allocate to each of those Parties pursuant
13 to the previously anticipated GSP and that is based on metered data or irrigated acreage
14 calculated by the GSA for relevant crop types.¹ This Court acknowledges that the individual BPA
15 established for each Party reflects the settlement and compromise of the Parties respecting water
16 rights among them subject to the terms of this Judgment. Such water rights are a form of
17 property right, subject to rights and restrictions pursuant to the reasonable and beneficial use
18 doctrine set forth in Article X, section 2 of the California Constitution. The allocation of BPA
19 among the Parties reflects a compromise of all water rights of all Parties to this action, which the
20 Court finds to be equitable and consistent with applicable law, including but not limited to Article
21 X, section 2 of the California Constitution. All BPA are of equal priority.

22 It is therefore consistent with constitutional protections afforded to the Parties,
23 California's common law, and the interest of legal certainty that the BPA adjudicated cannot be
24 adjusted following the entry of this Judgment. Sustainable Groundwater Management of the
25 Basin will be achieved through the Physical Solution prescribed herein inclusive of the necessary
26

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

1 Rampdown to alleviate the current Overdraft.

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

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

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

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

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

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

14 <u>Water Year</u>	<u>Annual Rampdown Schedule</u>	<u>Cumulative Rampdown</u>
15 2020-2021	5% reduction of BPA	5%
16 2021-2022	5% reduction of BPA	10%
17 2022-2023	5% reduction of BPA	15%
18 2023-2024	5% reduction of BPA	20%
19 2024-2025	5% reduction of BPA	25%

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

24 1. By June 1, 2021, the Watermaster shall seek agreement with the Technical
 25 Advisory Committee on a scope of work and budget for technical work through September 30,
 26 2023. Any disputes as to scope or budget will be resolved on hearing and order pursuant to
 27 Section VII prior to the commencement of the Water Year beginning October 1, 2021. The
 28 choice to perform specific technical tasks will be informed by considering the value and

1 importance of the work to attain a better understanding of the Basin and the goal of advancing
2 Sustainable Groundwater Management in comparison to the cost of the work.

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

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

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

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

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

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

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

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

21 10. By January 1, 2035, the Watermaster will, following receipt of input and
22 recommendations from the Technical Advisory Committee, determine the revised estimate of
23 Sustainable Yield for Water Years 2035/2036 through 2039/2040 (the “Fourth Five-Year
24 Period”). The revised determination of Sustainable Yield will consider all sources of
25 replenishment, including return flows and underflows, and all outflows from the Basin, and will
26 consider, among other data, information derived from updated runs of the BVHM. Any
27 disagreement with Watermaster’s determination may be appealed to this Court for review, subject
28

1 to the provisions of Section VII(A). The revised estimate of Sustainable Yield will determine the
2 Rampdown Rate for the Fourth Five-Year Period as described in Section III.F(11) of this
3 Judgment.

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

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

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

20 1. Overproduction up to the Max Overproduction Limit (defined below), must
21 be covered within one year of the Overproduction, either by using less allocation (under-Pumping
22 the allowed Annual Allocation or applying Carryover) in the subsequent Water Year or by Lease
23 or Permanent Transfer from another Party. If not covered by under-Pumping, Carryover, Lease,
24 or Permanent Transfer in the subsequent Water Year, the Party will be assessed an
25 Overproduction Penalty Assessment. In calculating Overproduction, any Carryover will be
26 applied first to the Party's production, then any Groundwater Pumped pursuant to a Lease, and
27 then the Party's Annual Allocation, so that Overproduction does not occur until the Party has
28

1 exceeded the sum of its Carryover, Leased Annual Allocation/Carryover, and its Annual
2 Allocation. The first Groundwater produced by a Party during any Water Year will be deemed to
3 be an exercise of any Carryover.

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

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

23 4. The Watermaster has the authority to enforce the terms of this Judgment,
24 including the Rules and Regulations and Physical Solution, which authority includes at a
25 minimum, the enforcement authority granted to a GSA under Water Code section 10732.
26 Notwithstanding the monetary limits in Water Code section 10732(a)(1), the Watermaster has
27 authority to establish an Overproduction Penalty Assessment, which will be no less than \$500 per
28 acre-foot. All Overproduction Penalty Assessments will be used by Watermaster to fund either (i)

1 acquisition of Annual Allocation to offset the Overproduction or (ii) its Watermaster Budget and
2 thereby reduce the amount of funds that must be raised from the annual Pumping Assessment.
3 Failure to pay the Overproduction Penalty Assessments will incur further enforcement terms, as
4 permitted by law, including but not limited to the right of the Watermaster to seek injunctive relief
5 and the right to lien real property for unpaid assessments.

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

25 **I. BPA Transfer.** In the interest of advancing the effective and efficient management
26 of the Basin and the policy of maximizing the beneficial use of the Basin's Groundwater,
27 consistent with Article X, section 2 of the California Constitution, all BPA may be Permanently
28 Transferred or Leased, subject to the provisions of this Section III.I. Unless otherwise noted, all

1 provisions within this Section III.I will be applicable to both Permanent Transfers and Leases;²
 2 provided that the assignment of BPA to a BPA Parcel(s), or in the case of the BWD or a mutual
 3 water company, their respective service area boundaries, including any future modifications
 4 thereto, will not constrain the Lease of such BPA for use elsewhere in the Basin consistent with
 5 the other provisions of this Section III.I.²

6 1. Good Standing and Intervention Requirements. Permanent Transfers and
 7 Leases may only be completed in accordance with these rules by Parties to this Judgment
 8 (including without limitation those Persons that have become subject to this Judgment by virtue of
 9 having been named and served with the Complaint) in good standing (meaning both ~~buyer~~grantee
 10 and ~~seller~~grantor have paid all applicable Pump assessments, fees, charges or will do so prior to
 11 completion of the transfer, and are otherwise in compliance with this Judgment). A transferee
 12 who is not already a Party must intervene as a Party as a condition of completing any Lease or
 13 Permanent Transfer.

14 2. Anti-Speculation Provision. A ~~buyer~~grantee of BPA pursuant to a
 15 Permanent Transfer must own at least one acre overlying the Basin for every five acre-feet of
 16 BPA transferred to the ~~buyer~~grantee, or, if the grantee of BPA is a mutual water company that
 17 exists now or in the future to serve parcel(s) with existing or later-acquired County land use
 18 entitlements, then the mutual water company must own no more BPA than the amount that is
 19 reasonably required to satisfy the demands of the land use entitlements to be served by such
 20 mutual water company taking into consideration future reductions of Annual Allocation (the
 21 “Eligibility Requirement”). The “Anti-Speculation” and Eligibility Requirement provisions of this
 22 ~~paragraph~~section do not apply to: (a) BWD, the County, or; and (b) an owner of an Original BPA
 23 Parcel so long as either (i) the Original BPA Parcel owner retains the same or greater quantity of
 24 acreage in proportion to its ~~Original~~originally granted BPA or (ii) the Original BPA Parcel owner
 25

26
 27 ² The County may in the future purchase BPA for the purpose of subsequently transferring it to
 28 parcels to facilitate discretionary project approvals within the County’s land use jurisdiction. If the
County does initiate such purchases, then all provisions of this Section III.I applicable to the
BWD or a mutual water company will apply to the County.

1 does not hold an amount of Annual Allocation in excess of the quantity of its originally granted
 2 BPA; and (c) Borrego Air Ranch Mutual Water & Improvement Co. (“Borrego Air Ranch”), the
 3 only mutual water company overlying the Basin allocated BPA in Exhibit “4” as of the date of
 4 entry of this Judgment, provided that Borrego Air Ranch does not own more BPA than the
 5 amount that is reasonably required to satisfy the demands of all legal lots within its service area
 6 shown on the Attachment to Exhibit “4” to this Judgment taking into consideration future
 7 reductions of Annual Allocation.

8 a. As a condition of completing a Permanent Transfer, the
 9 Watermaster may demand that a BPA ~~buyer~~grantee (excepting BWD, ~~the County~~Borrego Air
 10 Ranch satisfying the criteria specified above, and an owner of an Original BPA Parcel satisfying
 11 the criteria specified above) (i) submit a deed reflecting the ~~buyer’s~~grantee’s ownership in fee duly
 12 recorded, or Court order evidencing ownership by the ~~buyer~~grantee, of a legal parcel or parcels
 13 overlying the Basin of sufficient acreage to satisfy the ~~buyer’s satisfaction of~~Eligibility
 14 Requirement, or (ii) in the case where a BPA grantee is a mutual water company formed after the
 15 date of entry of this Judgment, submit a copy of the County ordinance, County zoning letter(s),
 16 and such other documentation reasonably required by the Watermaster to verify water demands
 17 for County approved land use entitlements of sufficient quantity to meet the Eligibility
 18 Requirement (the “Eligibility Proof”).

19 b. ~~a.~~ For purposes of establishing the Eligibility Proof, a ~~buyer~~grantee
 20 may show the requisite ownership of a legal parcel or parcels overlying the Basin to satisfy the
 21 Eligibility Requirement held in the name of the ~~buyer~~grantee, a subsidiary of the ~~buyer~~grantee
 22 where the ~~buyer~~grantee possesses at least a 51% ownership interest, or an affiliate of the
 23 ~~buyer~~grantee that has at least 51% common ownership with the ~~buyer~~grantee.

24 3. Eligibility Violation. In the event that the Watermaster determines that a
 25 ~~buyer~~grantee has not satisfied the Eligibility Requirement (an “Eligibility Violation”), the
 26 Watermaster will provide written notice of such Eligibility Violation to the ~~buyer~~grantee and such
 27 written notice will specify a period of not more than one year to cure such Eligibility Violation
 28

1 (“Cure Period”). To thereafter cure such Eligibility Violation, the ~~buyer~~grantee must submit the
2 Eligibility Proof within the Cure Period. If the ~~buyer~~grantee fails to so cure the Eligibility
3 Violation within the Cure Period, the BPA or that portion of the BPA to be transferred which is in
4 excess of the Eligibility Requirement following the end of the Cure Period, which ever quantity is
5 less, will be returned to the ~~seller or lessor~~grantor if required by the terms of the Permanent
6 Transfer, or else forfeited by the ~~buyer~~grantee and such BPA will be permanently retired for the
7 benefit of the Basin as a whole. No forfeiture of BPA or any portion thereof will be valid except
8 by order of this Court upon noticed motion and after hearing.

9 4. Transfer Records. ~~Except for the BWD, a mutual water company, and the~~
10 ~~County, upon~~Upon completion of the Permanent Transfer, the BPA transferred will be assigned
11 to the ~~buyer’s~~ grantee’s BPA Parcel(s) on the records of the Watermaster and removed from the
12 grantor’s BPA Parcel(s) on the records of the Watermaster. Notwithstanding the foregoing, upon
13 completion of the Permanent Transfer to BWD or a mutual water company, the BPA will be
14 assigned on the records of the Watermaster to BWD or the mutual water company, as applicable,
15 and such BPA will be assigned for use within the service area boundaries, including any future
16 modifications thereto, of such entity.

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

22 6. Permanent BPA Transfers with Land Conveyances.
23 a. BPA Parcels may be conveyed in full or in portions. With respect
24 to a conveyance of a fee interest to all of a BPA Parcel ~~or any portion thereof~~, the associated
25 BPA will automatically transfer to the successor of said BPA Parcel unless the grantor expressly
26 retains BPA by meeting the following conditions: (i) the deed, or comparable instrument,
27 conveying such full BPA Parcel expressly excludes all or a portion of the BPA from the
28

1 conveyance, and ~~provides that the BPA~~ specifies the quantity of the applicable BPA that is
 2 retained by the ~~conveying Party; and~~ grantor and the quantity, if any, that is conveyed with the
 3 BPA Parcel to grantee; (ii) the ~~conveying owner (grantor)~~ records a “water rights restrictive
 4 covenant” ~~against on~~ the ~~parcel~~ BPA Parcel being conveyed with the San Diego County Recorder
 5 in a form substantially similar to the applicable example provided in **Exhibit “6”** to this Judgment
 6 (“Water Rights Restrictive Covenant”) specifying the ~~amount~~ quantity of the applicable BPA that
 7 was retained by the grantor ~~(all or a portion) and subsequently delivers~~ and the quantity, if any,
 8 that was conveyed with the BPA Parcel to grantee; and (iii) within ten (10) business days of
 9 closing, grantor delivers via email and USPS (or other nationally-recognized carrier) a copy of the
 10 recorded Water Rights Restrictive Covenant to the Watermaster. ~~Such~~ and identifies in writing to
 11 Watermaster the parcel(s) and well number(s) to which the BPA will attach. The conveyed parcel
 12 will thereafter only be benefited by any residual BPA not retained by the grantor, and if all BPA is
 13 retained by the grantor, the conveyed parcel will cease to be benefited by BPA, and thus will no
 14 longer be a BPA Parcel, unless BPA is subsequently acquired and designated for the benefit of
 15 such parcel through a Lease or Permanent Transfer. ~~Such Water Rights Restrictive Covenant~~
 16 ~~must include a covenant prohibiting the future Pumping of Groundwater from the conveyed parcel~~
 17 ~~in excess of any residual BPA not retained by the grantor, unless BPA is subsequently acquired~~
 18 ~~for the benefit of that parcel. Within thirty days of the conveyance of a BPA Parcel with assigned~~
 19 ~~BPA, the successor in interest to such BPA Parcel shall provide written notice to the Watermaster~~
 20 ~~of the transfer of the BPA Parcel, and in the event the grantor has retained any BPA, a copy of the~~
 21 ~~Water Rights Restrictive Covenant specifying the amount of BPA retained by the grantor. If~~
 22 ~~grantor has retained any BPA consistent with the terms of this Section, the Water Rights~~
 23 ~~Restrictive Covenant must identify the parcel(s) and wells(s) to which the retained BPA is to be~~
 24 ~~subsequently assigned by the grantor.~~

25 b. With respect to a conveyance of a fee interest to a portion of a BPA
 26 Parcel, the grantor shall: (i) specify in the deed, or comparable instrument, conveying such portion
 27 of the BPA Parcel, the quantity of the applicable BPA retained by the grantor, if any, and the
 28

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

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

19 7. Compliance with Watermaster Review ~~and~~ for Permanent Transfers.

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

26 8. Permanent Transfer of BPA Separate from Parcel Transfer. If a Party's
27 BPA is Permanently Transferred from a BPA Parcel separately from a conveyance of a fee
28

1 interest to the BPA Parcel, for the Permanent Transfer to become effective, (i) the Parties to the
2 Permanent Transfer must comply with the following standards set forth in **Exhibit “3”** and (ii) ~~the~~
3 Sellerexcept for a conveyance of a portion of the applicable BPA to the BWD or a mutual water
4 company as a condition of obtaining water service, the grantor must record a Water Rights
5 Restrictive Covenant against the BPA Parcel with the San Diego County Recorder and
6 subsequently deliver a copy of the recorded Water Rights Restrictive Covenant to the
7 Watermaster. The Water Rights Restrictive Covenant must specify the amount of BPA
8 transferred from the BPA Parcel, include a covenant prohibiting future Pumping from the parcel
9 from which the BPA is transferred inconsistent with the Permanent Transfer or the terms of this
10 Judgment, and identify the parcel(s) and wells(s) to which the transferred BPA is to be assigned.
11 If all BPA is transferred from the parcel, as specified in the Water Rights Restrictive Covenant,
12 the parcel will cease to be benefited by BPA, and thus will no longer be a BPA Parcel, unless BPA
13 is subsequently acquired and designated for the benefit of such parcel through a Lease or
14 Permanent Transfer.

15 9. Required Notices to Watermaster.

16 a. Leases. A Lease will only be effective after a written notice has
17 been received by Watermaster, signed by both Parties to the Lease, specifying the amount of
18 Annual Allocation leased, the term of the Lease, the well(s) to which the BPA is assigned during
19 the term of the Lease, the Party responsible for payment of applicable Pumping Assessments, and
20 if the BPA is then benefitted by Carryover, the amount of any Carryover leased to the lessee as a
21 component of the Lease. If the Lease is for one or more Water Years other than the then-current
22 Water Year, the notice will specify the BPA that correlates to the Lease in the future Water Years
23 subject to the Lease (i.e., all Water Years subject to the Lease other than the current Water
24 Year), and the amount of the Lease of Annual Allocation for such future Water Years will be
25 determined by multiplying the amount of BPA to which the Lease correlates by the Pumping
26 Percentage applicable to each of the future Water Years during the Lease.
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1 b. Permanent Transfers. A Permanent Transfer will only be effective
2 after a written notice has been received by Watermaster, signed by both Parties to the Permanent
3 Transfer, specifying the amount of BPA permanently transferred; the new BPA Parcel and well(s)
4 to which the transferred BPA is to be assigned (excepting the BWD and ~~County~~mutual water
5 companies with respect to BPA Parcel); and certifying that the conditions in Sections 6 and 7
6 above have been satisfied; and, except for a transfer of BPA concurrently with the transfer of fee
7 title to an Original BPA Parcel or a transfer of a Party's BPA to other overlying parcels owned by
8 that Party (see Subsection D.5), no Permanent Transfer will be effective until the ~~Seller~~grantor
9 has obtained approval from Watermaster for the ~~sale~~transfer of the BPA following Watermaster
10 review. If the BPA grantor fails to deliver the required Permanent Transfer documents to the
11 Watermaster in accordance with, and at the time specified in this Subsection III.I, the BPA
12 grantor and BPA grantee shall be jointly and severally liable for the payment to Watermaster of all
13 assessments, including any unpaid Pumping Assessment and any Overproduction Penalty
14 Assessment, together with applicable interest and penalties relating to any delinquent assessment,
15 through the date of delivery of the Permanent Transfer documents to the Watermaster, as well as
16 for any costs of suit, attorneys' fees and reasonable costs of collection, which may include
17 obtaining a lien on the BPA Parcel (including any portion conveyed or retained), as prescribed by
18 this Judgment. Watermaster may elect to pursue recovery of amounts owed pursuant to this
19 III.I.9 against grantor, grantee, or both and against BPA Parcel(s) held by grantor and grantee.

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

25 10. Transfer Costs. All costs of transfers (including costs of any following
26 remediation) will be borne by the Parties to the transfer transaction, not by Pumping Assessments.
27 Likewise, enforcement costs will be borne by the Parties to the transfer with the ability for the
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1 prevailing party to recoup its legal costs from the non-prevailing party. If the Watermaster is the
 2 prevailing party in a Watermaster enforcement action, the Watermaster may recoup its legal costs
 3 from the non-prevailing party. If the Watermaster is not the prevailing party in a Watermaster
 4 enforcement action, the Watermaster will provide for the payment of the costs and expenses of
 5 the Watermaster from the Watermaster Budget.

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

13 **J. Fallowing Standards**

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

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

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

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

10 **K. Available Groundwater Storage Capacity**

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

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

24 Parties may change the point of Pumping on their real property for any BPA or portion
25 thereof to another point of Pumping on the same Party's real property, whether by County-
26 permitted new wells or replacement wells, so long as such change of point of Pumping does not
27 cause Undesirable Results or interfere with an existing well of another Party.
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1 **IV. BASIN ADMINISTRATION**

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

7 **B. Watermaster Board**

8 1. **Composition and Selection.** The Watermaster Board will be comprised of
9 five members, with each member having one vote, as follows: one representative and one
10 alternate representing the BWD; one representative and one alternate representing the County;
11 one representative and one alternate representing the agricultural sector Parties; one
12 representative and one alternate representing the recreational sector Parties; and one
13 public/community representative and one alternate. The Parties within the respective agricultural
14 and recreational sectors, and the process for selecting the respective agricultural, recreational, and
15 public/community representatives are specified in **Exhibit "7."** Any Watermaster Board member
16 or alternate may be removed by the Court for cause. Any vacancy on the Watermaster Board
17 shall be filled by the same procedure used in the appointment of the vacant seat.

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

25 3. **Supermajority Subject Matters.** Decisions by the Watermaster Board
26 concerning the following subject matters must receive a Supermajority Vote for approval
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- a. Decisions concerning the Watermaster Budget inclusive of the Pumping Assessments;
- b. Any change in the Watermaster Budget resulting in an increase of more than \$50,000;
- c. Establishment of the rate of Overproduction Penalty Assessments;
- d. Approval of capital projects;
- e. Borrowing of funds; and
- f. Purchasing or disposing of real property.

4. Watermaster Board Meetings. All Watermaster Board meetings and hearings must be conducted in substantial accordance with the requirements of the California open meeting laws under Government Code sections 54950 et seq., otherwise known as the “Brown Act”. Provided, however, that notwithstanding Government Code, section 54953(b)(3), at least two of the Watermaster Board members shall participate in Board meetings from locations overlying the Basin. Further, because the Watermaster Board acts under the authority of the Superior Court and does not qualify as a “local agency” under Government Code section 54951, any and all challenges to Brown Act compliance by the Watermaster Board may be heard only by the Superior Court Judge with continuing jurisdiction over the Judgment in the underlying action, in compliance with the requirements of the Judgment. Regular Watermaster meetings must be noticed with an agenda and supporting materials made available to the public at least three days prior to the meeting, and shall be open to the public in a public location that overlies the Basin. Meeting minutes must be taken of all Watermaster Board meetings, a copy of which must be furnished to any member of the public requesting such minutes.

C. Watermaster Staff. Watermaster may hire employees or contractors as needed, which may include without limitation (a) one or more technical advisors to provide input to the Technical Advisory Committee, Watermaster staff and the Watermaster Board, (b) a person to prepare meeting notes, prepare an Annual Report to this Court, and administer this Judgment and (c) an attorney to advise and represent the Watermaster. In order to avoid a potential conflict of

1 interest, the Watermaster Technical Consultant (interim or otherwise) must be independent (not
 2 under contract with any Party) and selected by the Watermaster with input from the Technical
 3 Advisory Committee through an arms-length RFP process, unless otherwise agreed to by a
 4 Supermajority Vote of the Watermaster. Any technical advisor, attorney, executive director, or
 5 similar employee or contractor performing services that concern technical or policy matters must
 6 be independent (not under contract with any Party) and selected by the Watermaster (and if a
 7 technical advisor, following input from the Technical Advisory Committee) through an arms-
 8 length RFP process unless otherwise agreed by a Supermajority Vote. Any other Watermaster
 9 employee or contractor may be employed by, or under contract with a Party, provided that he or
 10 she abides by any relevant Court orders, Watermaster determines that the employee or contractor
 11 will not be issuing technical or policy recommendations to Watermaster, and the retention of the
 12 employee or contractor is appropriate to perform services to Watermaster in the most effective
 13 and cost-efficient manner.

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

20 **E. Watermaster Powers and Responsibilities.**

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

26 **2.** ~~1.~~ **Notice List.** The Watermaster shall maintain a current list of Parties to
 27 receive notice hereunder.

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1 3. ~~2.~~ Annual Budget Process. The Watermaster shall prepare a Watermaster
 2 Budget for each Water Year, hold hearings thereon, and adopt a final Watermaster Budget. The
 3 annual Watermaster Budget will be determined by the Watermaster in an amount necessary to
 4 fulfill the duties of Watermaster as prescribed by this Judgment and a reasonable reserve, all of
 5 which will be subject to review and revision by the Court pursuant to Section VII. Following the
 6 adoption of the Watermaster Budget, expenditures within budgeted items may thereafter be made
 7 by Watermaster in the exercise of powers herein granted, as a matter of course. Commencing
 8 with the Watermaster Budget for the 2021-2022 Water Year, the annual budget process to
 9 determine the budget for the following Water Year will be as follows:

<u>Completion Deadline</u>	<u>Action</u>
June 30 ²³	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
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
October 31	Court order is entered on any Party's challenge to budget heard by the Court
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.

²³ 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	November 30	Watermaster provides Pumping Assessment invoice, based on the
2		Adjusted Pumping Calculation for the preceding Water Year, to each
3		Party for first installment of Pumping Assessment
4	December 31	First installment of Pumping Assessment due
5	May 31	Watermaster provides Pumping Assessment invoice, based on the
6		Adjusted Pumping Calculation for the preceding Water Year, to each
7		Party for second installment of Pumping Assessment
8	June 30	Second installment of Pumping Assessment due

8 4. ~~3.~~ Pumping Assessments. The annual Watermaster Budget costs in excess
9 of applicable grants, loans, any Overproduction Penalty Assessment funds elected by Watermaster
10 to be applied to the Watermaster Budget (i.e. any such funds not used to Lease Annual
11 Production to offset the Overproduction), and assessments levied and collected on the State Park
12 and the Borrego Springs Unified School District for their Pumping₂, will be funded by a uniform
13 “Pumping Assessment”. To determine each Party’s Pumping Assessment, Watermaster will first
14 determine for each Party an “Adjusted Pumping Calculation,” which will equal the Amount of
15 Annual Allocation Pumped by the Party during the preceding Water Year (or by the Party’s lessee
16 if the Party has Leased any portion of its Annual Allocation to another Party), minus the amount
17 of Carryover Pumped during the preceding Water Year³⁴ by the Party (or any lessee of the
18 Carryover) and minus any amount of Groundwater Pumped pursuant to a Lease of Annual
19 Allocation or Carryover from another Party, plus the amount of Carryover elected for the ensuing
20 Water Year by the Party. The amount of each Party’s Pumping Assessment will be calculated by
21 multiplying the amount of the annual Watermaster Budget against a percentage derived by
22 dividing the amount of the Party’s Adjusted Pumping Calculation by the total of all Parties’
23 Adjusted Pumping Calculations. If a Party timely notifies Watermaster that no Pumping will
24 occur pursuant to the Party’s BPA during the ensuing Water Year and that the Party will not
25 Carryover any of its Annual Allocation from the preceding Water Year, that Party’s Adjusted
26 Pumping Calculation shall be excluded from the total of all Parties’ Adjusted Pumping

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28 ³⁴ There will be no Carryover Pumped during the 2020-2021 Water Year because this will be the first Water Year with Annual Allocations.

1 Calculations in calculating Pumping Assessments for the ensuing Water Year under this
2 Subsection IV(E)(4) and the Party will not be assessed a Pumping Assessment in the ensuing
3 Water Year. Under such election, no Pumping may be made pursuant to the applicable Annual
4 Allocation during the ensuing Water Year. If a Party electing to forego Pumping in a Water Year
5 pursuant to a BPA subsequently elects to Pump Groundwater pursuant to the BPA in a future
6 Water Year (i.e., any Water Year after the ensuing Water Year) or transfers the BPA to another
7 Party pursuant to a Lease or Permanent Transfer and the transferee elects to recommence
8 Pumping in the future Water Year pursuant to the BPA, the Party's Adjusted Pumping
9 Calculation for purposes of determining the amount of the Party's (or the transferee's) Pumping
10 Assessment during the Water Year in which it intends to recommence Pumping will be
11 determined on the basis of the Party's Annual Allocation in effect during the preceding Water
12 Year (i.e., for purposes of calculating the Pumping Assessment the Party [or transferee] will be
13 deemed to have Pumped the applicable Annual Allocation during the preceding Water Year). The
14 cumulative Adjusted Pumping Calculations used as the denominator for determining Pumping
15 Assessments will be adjusted in a like amount.

16 5. ~~4.~~ Annual Report

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

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

7 6. ~~5.~~ Pumping Reports. Each Pumper shall transmit to Watermaster, pursuant
8 to procedures and time schedules to be established by Watermaster, water production data from
9 the Pumper's meter system. Each Pumper shall annually file with Watermaster, on a form to be
10 prescribed by Watermaster, a report that provides: (i) a written verification by the manufacturer
11 or qualified meter installer certifying the ongoing accuracy of the meter readings and meter
12 calibration, as well as verification that there are no valves or other devices upstream of the meter
13 that could lead to pumped water being diverted before being read by the meter; and (ii) such
14 additional information as may be required by order of the Court.

15 7. ~~6.~~ Meetings with the Technical Advisory Committee. The Watermaster
16 shall meet on a regular basis and at least semi-annually with the Technical Advisory Committee to
17 review Watermaster activities pursuant to this Judgment and to receive advisory
18 recommendations from the Technical Advisory Committee.

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

21 9. ~~8.~~ Data, Estimates and Procedures. The Watermaster shall use, among
22 other available data, BVHM runs and best available records and data to support the
23 implementation of this Judgment. Where actual records of data are not available, Watermaster
24 shall rely on and use sound scientific and engineering estimates for the BVHM runs. Watermaster
25 may use preliminary records of measurements, and, if revisions are subsequently made,
26 Watermaster may reflect such revisions in subsequent accounting.

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1 10. ~~9.~~ Watermaster's Access to Private Property. Watermaster may enter the
2 private property of Parties for the purpose of administering its responsibilities under this
3 Judgment, provided that, excepting any entry only for the specified water quality monitoring and
4 alternative meter inspection purposes pursuant to Sections VI(A) and VI(B), such entry may only
5 be made at the permission of the Party and following execution of another Entry Agreement as
6 specified in **Exhibit "8"** specifying the other activities to be undertaken, or pursuant to or an
7 inspection warrant under Water Code section 10725.4.

8 **F. Injuries Caused by Watermaster and Board Member, Officer, and**
9 **Appointing Entity Liability.** As a special master of this Court, Watermaster will not be held
10 liable to any Person for any injury, at law or in equity, alleged to result or arise from,
11 Watermaster's actions or omissions. The Court may, however, through noticed motion to this
12 Court under the continuing jurisdiction provisions set forth in Section VII of this Judgment, order
13 Watermaster to effect an appropriate remedy for any Person demonstrating an injury resulting
14 from Watermaster's actions or omissions, including without limitation payment of monetary sums.
15 No Watermaster Board member or officer, nor any Person appointing a Watermaster Board
16 member, will be held liable for any injury arising from or relating to a Watermaster Board
17 member's or officer's service on behalf of Watermaster if such Board member or officer
18 conducted himself or herself in good faith and reasonably believed that his or her conduct was
19 lawful and in compliance with the Judgment, Rules and Regulations of the Watermaster and
20 orders of the Court. If any dispute arises concerning the satisfaction of this criteria for such
21 exemption of liability pursuant to the preceding sentence, the Court will determine such matter on
22 noticed motion pursuant to the continuing jurisdiction provisions set forth in Section VII of this
23 Judgment. If this Court determines in such a proceeding that the Board member's or officer's
24 conduct was made in good faith and pursuant to a reasonable belief that his or her conduct was
25 lawful and in compliance with the Judgment, Rules and Regulations of the Watermaster and
26 orders of the Court, then: (i) any monetary remedies ordered by this Court will not be paid by the
27 subject Watermaster Board member, officer, or appointing Person, but rather by Watermaster;
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1 and (ii) any reasonable attorney fees, costs, or other expense incurred by such Watermaster Board
2 member, officer, or appointing Person in defense of, or as a result of, the matter will be paid in
3 advance or reimbursed by Watermaster. Watermaster shall obtain and maintain liability insurance,
4 including Officers and Directors coverage, in amounts reasonably necessary to cover
5 Watermaster's obligations under this Section IV.F, provided that Watermaster shall only be
6 obligated to obtain as much of such insurance as is available to Watermaster at reasonable rates.

7 **G. Technical Advisory Committee**

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

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

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

10 **V. ASSESSMENTS**

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

13 1. **Pumping Assessment.** The Watermaster shall provide an invoice for the
14 assessed Pumping Assessment to each Party pursuant to the schedule set forth in Section IV.E(3).
15 Each Party who does not timely notify Watermaster of their election to forego Pumping and
16 Carryover of its Annual Allocation in the ensuing Water Year will be liable for the payment of
17 such invoice regardless of whether they subsequently Lease or Permanently Transfer part or all of
18 their Annual Allocation during that Water Year. An appeal of the Watermaster's calculation of
19 any Pumping Assessment must be brought pursuant to Section VII of this Judgment within thirty
20 (30) days of receipt of Watermaster's invoice. Payment of any Pumping Assessment appealed to
21 the Court must be made within ten (10) days following the Court order on appeal. If payment is
22 not made on or before the applicable due date, the Watermaster will add a penalty of one percent
23 (1%) per month thereof to such Party's statement.

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

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

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

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

17 Parties holding BPA will install and maintain, at their own expense, meters approved by
18 Watermaster that can electronically transmit a recording of the amount of Groundwater Pumped
19 from the Basin and other data to the Watermaster in real time on a schedule as determined by the
20 Watermaster. This meter program will result in cost savings by avoiding the need for the
21 Watermaster to physically read, inspect and validate the accuracy of meters. Alternatively, any
22 Party holding BPA may elect to install and maintain, at its own expense, other meters approved by
23 Watermaster on condition that: (i) the Watermaster physically read the meters on the schedule
24 determined by the Watermaster and the Party pay all costs associated with the Watermaster's
25 reading, accounting and reporting related to such meters; and (ii) the Party has executed an Entry
26 Agreement as specified in **Exhibit "8"** for the purpose of allowing Watermaster access to the
27 Party's well.
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B. Water Quality Monitoring Plan

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

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

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

2 **DECISIONS**

3 **A. Jurisdiction Reserved.** Consistent with Section 852 of the Code of Civil
4 Procedure, full jurisdiction, power and authority are retained by and reserved to this Court for
5 purposes of enabling this Court upon the noticed motion of any Party or the Watermaster, or sua
6 sponte, to make such further or supplemental orders or directions as may be necessary or
7 appropriate for: (i) the operation of the Physical Solution established by this Judgment; (ii)
8 interpretation, enforcement or carrying out of this Judgment, or (iii) the modification, amendment,
9 or amplification any of the provisions of this Judgment, or to add to the provisions hereof,
10 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 Watermaster
19 decision or action or it is barred. Unless otherwise agreed by all Parties in disagreement, any
20 Watermaster Boardmember in disagreement, and Watermaster if the dispute involves
21 Watermaster (“Party(ies) in Disagreement”), upon filing a motion with this Court to resolve the
22 disagreement, the Parties in Disagreement shall first engage in mediation, which mediation will
23 extend the Court hearing date for up to sixty (60) days while the mediation is pending. Unless
24 otherwise provided for herein or the Parties in Disagreement agree otherwise, the mediation will
25 be initiated and conducted under the applicable rules of the American Arbitration Association that
26 are applicable as of the date of the dispute. The mediation will be limited to one full day unless
27 extended by the Parties in Disagreement. The Parties in Disagreement participating in any such
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1 mediation will be responsible for their own individual costs of participation and shall split evenly
2 the cost of the mediation unless the Watermaster is a Party in Disagreement, in which case the
3 Watermaster shall contribute 50% of the cost, using funds from Watermaster's annual budget, and
4 the other 50% of the cost will be split evenly among the other Parties in Disagreement
5 participating in the 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 4. Any Watermaster Board member, officer, or Person appointing a
13 Watermaster Board member, including but not limited to the County of San Diego, named in
14 litigation filed after the close of the Annual Budget and Pumping Assessment proceedings under
15 Section IV.E(3), (4), may bring a motion to this Court without the necessity of engaging in
16 mediation pursuant to Section VII.A(1), to obtain an order of this Court to revise the Annual
17 Budget and Pumping Assessment as necessary to ensure that the Watermaster is properly
18 capitalized to promptly fund Watermaster's responsibilities set forth in Section IV.F.

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

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

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

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

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

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

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

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

10 **X. MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

Dated: _____, 2021 By: _____
Peter J. Wilson
Superior Court of the State of California for
the County of Orange

~~XXX~~
~~Superior Court of the State~~
~~of California for the~~
~~County of _____~~