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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF VENTURA**

10 UNITED WATER CONSERVATION
11 DISTRICT,

12 Plaintiff,

13 vs.

14 CITY OF SAN BUENAVENTURA
15 and DOES 1 through 1,000, inclusive,

16 Defendant.

17
18 LIMONEIRA COMPANY, ALTA
19 MUTUAL WATER CO., et al.,

20 Intervenor,

21 CITY OF SAN BUENAVENTURA,

22 Cross-Complainant,

23 - vs -

24 LIMONEIRA COMPANY, ALTA
25 MUTUAL WATER CO., et al.,

26 Cross-Defendants.

27
28 TO ALL PARTIES:

CASE NO. CIV115611

Assigned for All Purposes to the Hon. Vincent O'Neil
Department 40

**NOTICE OF MOTION AND MOTION TO
AMEND AND RESTATE THE SANTA PAULA
BASIN JUDGMENT; POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**(Post Judgment Proceeding, Judgment Entered
March 7, 1996)**

Assigned for All Purposes to:
Honorable Vincent O'Neil
Department 40

Date: Tuesday, August 24, 2010
Time: 8:30 AM
Reservation Number: 1374940

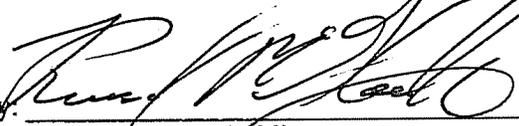
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PLEASE TAKE NOTICE that on a date and time to be determined by the Court, which will be the subject of a subsequent notice, in Department 40 of the Ventura County Superior Court, located at 800 North Victoria Avenue, Ventura, CA 93009, the City of Ventura, United Water Conservation District, and the Santa Paula Basin Pumpers Association will move the Court for an Order Amending and Restating the Judgment herein. The Motion will be made on the grounds that amendment to the Judgment is required to optimally manage the groundwater resources of the Santa Paula Groundwater Basin, and the other grounds stated in the attached Memorandum of Points and Authorities.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities and exhibits thereto, the declarations of Frank Brommenschenkel and Tony Morgan, and on all the papers, pleadings, and records on file in this action.

Dated: June 30, 2010

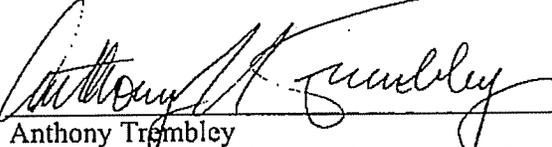
BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: 

Russell M. McGlothlin
Attorneys for Santa Paula Basin Pumpers Association

Dated: June 30, 2010

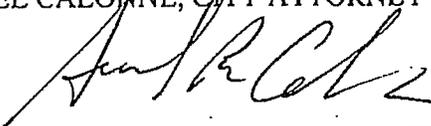
NORDMAN CORMANY HAIR & COMPTON LLP

By: 

Anthony Trembley
Attorneys for United Water Conservation District

Dated: June 30, 2010

CITY OF SAN BUENAVENTURA
ARIEL CALOMNE, CITY ATTORNEY

By: 

Ariel Calonne, City Attorney
Attorneys for City of San Buenaventura

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO AMEND AND RESTATE JUDGMENT

I. INTRODUCTION

This Motion to Amend and Restate the Santa Paula Basin Judgment arises out of groundwater litigation among the parties pertaining to the management of the Santa Paula Basin (“Basin”) and the relative rights of the parties to extract groundwater therefrom. A judgment providing for a physical solution for the management of the Basin was entered by stipulation on March 7, 1996 (“Judgment” or “Original Judgment”). (A copy of the original and presently-operative Judgment is attached hereto as Exhibit “A.”) This Court retained continuing jurisdiction over the matter in accordance with the provisions of Article X, Section 2. of the California Constitution to ensure the reasonable, beneficial and efficient use of the Basin’s water resources. (Judgment, p. 25-26.) The Court’s continuing jurisdiction includes the authority to issue additional orders and to modify or amend any provisions of the Judgment. (*Id.*)

Upon entry of the Judgment, the parties assumed certain obligations, including the formation of a Technical Advisory Committee (“TAC”), to evaluate hydrogeologic conditions within the Basin and to provide further reports to the Court. The TAC is composed of the City of San Buenaventura (“City”), the Santa Paula Basin Pumpers Association (“SPBPA”), and the United Water Conservation District (“United”). (Judgment, pp. 15-16.)

After extensive discussion and negotiation, the members of TAC are in agreement that certain amendments of the Judgment pursuant to the Court’s reserved jurisdiction are needed to optimally manage the Basin for its long-term protection as a community water supply source. (See Stipulation to Amend and Restate the Santa Paula Basin Judgment (“Stipulation”), Exhibit “B,” hereto.) The members of TAC mutually bring this Motion to Amend and Restate Judgment (“Motion”), and respectfully request that this Court grant the proposed order approving the Motion (“Order”), attached hereto as Exhibit “C.”

1 **II. CURRENT CONDITIONS IN THE SANTA PAULA BASIN; BASIN**
2 **MANAGEMENT STRATEGY**

3 **A. THE BASIN**

4 The Santa Paula Groundwater Basin (“Basin”) is located in Ventura County along and
5 adjacent to the Santa Clara River, generally bounded on the west by the town of Saticoy and on
6 the east by the Santa Paula Creek. The Basin is elongated in a northeast to southwest direction
7 and is about 10 miles long and 3.5 miles wide. It is bounded by the Sulphur Mountain Foothills
8 on the north and South Mountain on the south.

9 **B. THE PARTIES**

10 1. United. The District is a public agency duly organized and operating under
11 the provisions of Division 21 of the Water Code of the State of California, Sections 74000
12 through 76501.

13 2. SPBPA. The SPBPA is a California nonprofit mutual benefit corporation
14 whose members consists of the intervenors in the Judgment, all of which were granted an
15 Individual Party Allocation (“IPA”) under the Judgment to pump groundwater from the Basin.
16 The members of the Association include individuals, trusts, partnerships, corporations, mutual
17 water companies, and the City of Santa Paula, a general law city.

18 3. City. The City is a chartered city of the State of California, situated in the
19 County of Ventura, California.

20 **C. THE TAC AND THE 2008 ANNUAL REPORT**

21 The Judgment provides for the creation of the TAC, which is charged with establishing a
22 program to monitor conditions in the Basin, including verification of future pumping amounts,
23 measurements of groundwater levels, estimates of inflow to and outflow from the Basin,
24 increases and decreases in groundwater storage, and analyses of groundwater quality.
25 (Judgment, p. 15.) The Judgment requires an annual report of the results of the monitoring
26 program to be filed each year with the TAC. (Judgment, p.16.) The TAC recently filed the 2008
27 Santa Paula Basin Annual Report (“Annual Report”) with the Court. (See Submission of 2008
28

1 Santa Paula Basin Annual Report, filed April 2, 2010.) The Annual Report consists of several
2 topics, including the status of the Basin, and long-term trends and analysis of 2008 data.

3 **D. BASIN MANAGEMENT STRATEGY**

4 During the last several years, there has occurred a gradual decline in groundwater levels in
5 the Basin. (Annual Report, p. 2.) The decline is a matter of some concern, but the decline has
6 not been abrupt. Further monitoring and research is necessary to determine the cause of the
7 decline and the most appropriate and cost-effective remedial action should the trend continue.
8 (*Id.*) Going forward, the members of the TAC are united in their support for a two-pronged
9 strategy consisting of a Basin monitoring and action plan to address the long-term gradual decline
10 in Basin groundwater levels, and achieve optimal management of the Basin under the Judgment.

11 **1. Basin Monitoring and Action Plan.**

12 Consistent with Section 4 of the Judgment (Judgment, pp. 15-16), and as more fully
13 described in the Annual Report, the TAC intends to continue to monitor and report to the Court
14 regarding the Basin's groundwater levels and hydrogeological conditions, and to conduct further
15 research during the next 12 to 24 months to: (a) determine the cause of the long-term gradual
16 decline in the groundwater elevations; and (b) attempt to formulate remedial actions to reverse
17 the problem should it persist. A description of the TAC's proposed action plan is described on
18 pages 2 and 3 of Annual Report. (Declaration of Tony Morgan ("Morgan Decl."), attached
19 hereto as Exhibit "E," ¶ 2.)

20 Potential actions to be considered for adoption include hydrogeologic "triggers" for
21 implementation of staged reductions in authorized groundwater production, augmentation of
22 Basin replenishment, or both. These activities are more specifically outlined in the "Status of the
23 Basin" section of the Annual Report at pp. 2-3 therein.

24 **2. Amended and Restated Judgment.**

25 It has become apparent in recent years that the Judgment should be amended to achieve
26 more comprehensive and better management of the Basin. The amendments are necessary to (a)
27 bring virtually all of the Basin's groundwater producers into this action as parties subject to the
28

1 Judgment's terms; (b) clarify the operations of the SPBPA and groundwater production by its
2 members; and (c) specify water rights transfer procedures. If approved by the Court, the
3 amendments will facilitate Basin management by ensuring full accounting of production,
4 adherence to IPA, and streamlined transfer procedures.

6 **III. PROPOSED AMENDMENTS TO THE JUDGMENT**

7 The proposed Judgment amendments are shown in the interlineated version of the
8 proposed Amended and Restated Judgment attached as Exhibit "1" to the Stipulation (Exhibit
9 "B" hereto). A clean version of the proposed Amended Judgment ("Amended Judgment") is
10 attached as Exhibit "1" to the proposed Order (Exhibit "C" hereto). The more significant changes
11 are summarized below.

12 **A. JOINDER OF NON-PARTY WELL OWNERS AND ASSIGNMENT OF** 13 **IPA (AMENDED JUDGMENT, SECTION 3)**

14 The Original Judgment, identified 16 well owners in the Basin that were not included as
15 parties to the 1996 Judgment. Despite their characterization as "nonparties," these well owners
16 were assigned IPA. (Original Judgment, pp. 8-12.) The Judgment required the SPBPA to obtain
17 the voluntary joinder of these nonparties to the Judgment. (*Id.* at p.12.) The SPBPA has
18 expended considerable effort to cause these *Identified* nonparties to voluntarily intervene by
19 stipulation either previously or concurrently with this Motion. (*See* Declaration of Frank
20 Brommenschenkel ("Brommenschenkel Decl."), attached hereto as Exhibit "D," ¶ 9.)

21 In addition, several other well owners were not even identified at the time of the 1996
22 Judgment, or have subsequently drilled wells within the Basin outside the purview of the
23 Judgment. (Brommenschenkel Decl. at ¶ 8.) There are 10 such *previously-unidentified* nonparty
24 well owners which now desire to stipulate to become parties to the Judgment and join the
25 SPBPA. (Brommenschenkel Decl. at ¶ 10.) The Motion proposes that each of these new parties
26 will receive an IPA like other individual overlying landowner parties. The amount of IPA
27 proposed to be granted to each of these new parties represents the lesser of either: (a) the average
28 annual quantity produced before entry of the Judgment, or (b) the average annual quantity

1 produced during the last seven years. (*Id* at ¶ 11.) This formula will treat both new and existing
2 parties fairly by not affording these new parties a windfall of IPA not reflected in their historical
3 pumping prior to the entry of the Judgment, nor affording an IPA in excess of the recent pumping
4 amounts.

5 Joining both the identified and previously-unidentified non-party well owners as parties to
6 the Judgment, and providing them with an IPA, will promote greater certainty regarding
7 extractions and comprehensive Basin management. Doing so will enhance the Judgment as a
8 complete physical solution for the protection of the Basin, consistent with Article X, Section 2 of
9 the California Constitution. (*See* discussion of the Court’s legal authority and duties in Part IV
10 below.)

11 Unfortunately, despite the SPBPA’s best efforts, there are ten well owners within the
12 Basin that refused to stipulate to become a party to the Judgment despite extensive efforts by the
13 SPBPA and the City to contact these well owners and encourage them to stipulate. (*See*
14 Brommenschenkel Decl., ¶ 12.) However, as shown in Table “C” of Exhibit “B” to the proposed
15 Amended Judgment, the combined production by these ten well owners has averaged only 43
16 acre-feet per year in recent years. (*Id.*) Because this quantity is comparatively minor in relation
17 to the Basin’s supply as a whole, the TAC members believe that the Basin can be effectively
18 managed without joinder of these well owners at this time, but the parties reserve all rights and
19 legal claims to join and seek to limit production by this well owner in the future if the TAC
20 deems such legal action is necessary for the effective management of the Basin. On the other
21 hand, if the Court deems it appropriate to adjudicate the rights of these well owners to pump
22 groundwater from the Basin at this time, upon the Court’s request, the members of TAC will
23 promptly seek to join the these non-party well owners to the Judgment pursuant to the Court’s
24 reserved jurisdiction.

25 **B. DE MINIMUS PUMPING ALLOCATION (AMENDED JUDGMENT,**
26 **SECTION 3)**

27 The Motion also proposes that a *de minimus* pumping allocation of five (5) acre feet per
28 year be established, which would allow any well owner to pump at least five acre-feet annually

1 regardless of historical right. (Amended Judgment, § 3(e).) This *de minimus* allocation will
2 reduce the administrative and legal burdens associated with management of small groundwater
3 pumpers (e.g. single family residences), and allow overlying parcels access to the Basin for small
4 uses. Any overlying landowner will be able to intervene and obtain a *de minimus* allocation. The
5 TAC does not anticipate significant new groundwater production pursuant to the proposed *de*
6 *minimus* pumping allocation provisions because the costs of drilling and operating a well will
7 typically outweigh the commercial/industrial benefit of accessing only 5-acre-feet per year of
8 groundwater. (Morgan Decl., ¶ 3.) Therefore, the TAC does not expect any material adverse
9 impacts to the Basin from the establishment of a *de minimus* allocation. (*Id* at ¶ 3).

10 However, the *de minimus* allocation does afford beneficial flexibility in the operation of
11 the Judgment. Further, should *de minimus* pumping threaten to injure the Basin or any party
12 despite TAC's expectations, or should the provision be abused, the proposed amendments
13 specifically provide that any party may petition the Court pursuant to the Court's reserved
14 jurisdiction to request that the Court interpret, amend or eliminate the *de minimus* pumping
15 provision, or to issue any other necessary order. (Amended Judgment, § 3(e).) For these reasons,
16 members of TAC unanimously support the establishment of a *de minimus* allocation of five acre-
17 feet per parcel.

18 **C. REGULATION OF PUMPING WITHIN THE SPBPA (AMENDED**
19 **JUDGMENT, SECTIONS 3, 9, 10)**

20 The Amended Judgment also clarifies that groundwater pumping by members of the
21 SPBPA will be limited to their respective IPA. (Amended Judgment, § 3.) Further, SPBPA
22 members must be in good standing with the SPBPA as a condition of pumping water pursuant to
23 their IPA. (*Id.*)

24 The amendments also specifically recognize: (a) the SPBPA's authority to monitor and
25 enforce compliance with each member's IPA (Amended Judgment, § 9); and (b) the SPBPA's
26 authority to levy assessments upon its members (Amended Judgment, § 10). This specific
27 recognition will facilitate the SPBPA's ability to perform its trustee duties on behalf of its
28 members.

1 **D. PROPORTIONAL PUMPING REDUCTIONS (AMENDED JUDGMENT,**
2 **SECTION 6)**

3 If reductions in groundwater extractions are necessary to protect the Basin in the future,
4 the amendments provide for an equitable distribution of such reductions between the City and the
5 SPBPA. (Amended Judgment, § 6.) The changes within Section 6 do not fundamentally alter the
6 respective pumping priorities established by the Original Judgment. Rather, the changes were
7 made to (a) allocate responsibility for reductions necessary to account for the granting of a small
8 amount (specifically 280.2 acre-feet) of new IPA to accommodate their intervention; and (b)
9 address a few ambiguities that arose during discussions among the parties (e.g., reductions by the
10 City of Ventura respective of any IPA that the City acquires from SPBPA members).

11 **E. CLARIFICATION OF TRANSFER RULES (AMENDED JUDGMENT,**
12 **SECTION 11)**

13 The amendments address and clarify the rules for transfers and leases of, and succession
14 to, IPA, in conjunction with land conveyances or otherwise. These provisions include
15 requirements for recordation of a specific water rights deed in conjunction with a permanent
16 transfer of the IPA independent from a transfer in conjunction with land conveyance. (*See*
17 *Amended Judgment, § 11(c); Exhibit “D” to Amended Judgment.*) Recordation of such a deed
18 will avoid future conflicts and ambiguities between disparate successors of land and water rights.
19 The amendments also require advance written notice to the TAC of proposed permanent transfers
20 so that the TAC members can evaluate potential injury to the Basin or any party from the
21 proposed transfer. (Amended Judgment, § 11(f).) These amendments are collectively designed
22 to prevent future confusion and potential conflicts, streamline transfers between willing buyers
23 and sellers, and promote transparent recordkeeping.

24 **F. VARIOUS EDITS TO JUDGMENT**

25 The amendments also add and revise text to clarify and refine certain of the Judgment’s
26 provisions to remove provisions that have sunsetted, avoid potential ambiguities, facilitate
27 improved Basin management, provide greater protection of the Basin’s groundwater resources,
28 and enhance the rights and interests of the parties to the Judgment. The TAC members will

1 provide further briefing and explanation for any particular change upon request of the Court.

2
3 **IV. ISSUANCE OF AN ORDER APPROVING AN AMENDED AND RESTATED**
4 **JUDGMENT IS CONSISTENT WITH THE COURT'S AUTHORITY**

5 In the Original Judgment, this Court reserved continuing jurisdiction over matters
6 pertaining to the Basin, including the amendment or modification to the Judgment. (Judgment,
7 pp. 25-26.) A court's retention of continuing jurisdiction in water rights cases is regarded as an
8 "appropriate exercise of equitable jurisdiction," and "[c]ourts regularly affirm the expansive
9 retention of jurisdiction in cases involving water." (*Central And West Basin Water*
10 *Replenishment District v. Southern California Water Company* (2003) 109 Cal.App.4th 891, 903,
11 citing *City of L.A. v. City of Glendale* (1943) 23 Cal.2d 68, 81.)

12 All water use in this state is subject to Article X, Section 2 of the California Constitution,
13 which requires that:

14 "…the water resources of the State be put to beneficial use to the
15 fullest extent of which they are capable, and that the waste or
16 unreasonable use or unreasonable method of use of water be
17 prevented, and that the conservation of such water is to be
18 exercised with a view to the reasonable and beneficial use thereof
19 in the interest of the people and for the public welfare."

20 These broad provisions are applicable to "the settlement of all water controversies."
21 (*Central Basin, supra*, 109 Cal.App.4th at 905, citing *Miller & Lux v. San Joaquin L. & P. Corp.*
22 (1937) 8 Cal.2d 427, 435.) To achieve the Constitutional mandate, the court possesses broad
23 equitable powers to implement (and to modify as appropriate) a physical solution to provide for
24 more optimal water management in a manner that does not unreasonably interfere with prior and
25 paramount water rights. (*Central Basin, supra*, 109 Cal.App.4th at 903-904; *Rancho Santa*
26 *Margarita v. Vail* (1938) 11 Cal.2d 501, 558-562; *City of Lodi v. East Bay Municipal Utility*
27 *District* (1936) 7 Cal.2d 316, 341.)

28 Consistent with this body of law, the Judgment imposes a "physical solution" to create a
permanent management structure to protect and preserve the Basin's water resources, subject to
the Court's reserved jurisdiction to modify the physical solution as necessary. (Original
Judgment, § 17.) The Court's reserved jurisdiction allows the Court to adapt the Judgment to

1 new circumstances and as necessary and appropriate to carry out the purposes of the Judgment as
2 a physical solution for the management of the Basin. (*Id.*)

3 Here, the parties after extensive discussion agreed on the proposed amendments to the
4 Judgment to foster better Basin management. The law favors compromise and settlement of
5 water rights issues, and further provides that parties may agree to a solution which waives or
6 alters their water rights in a manner which they believe to be in their best interests. (*Central*
7 *Basin, supra*, 109 Cal.App.4th at 912.) As explained above, the amendments are designed to
8 improve the Judgment to achieve more comprehensive, effective, and efficient Basin
9 management. Consistent with Article X, Section 2 of the California Constitution, the Court has
10 the authority to act upon its reserved jurisdiction, and its broad equitable powers in water cases,
11 to amend the Judgment to improve the Judgment's prescribed physical solution.

12

13 **V. CONCLUSION**

14 Based on the foregoing, the parties respectfully request this Court to grant this Motion and
15 issue an order in the form of the proposed Order filed concurrently herewith.

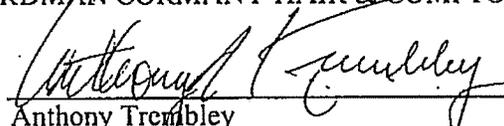
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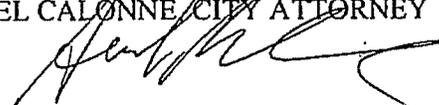
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