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per Govt. Code §6103**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF KERN

TEHACHAPI-CUMMINGS COUNTY  
WATER DISTRICT, a body corporate and  
politic,

Plaintiff,

vs.

FRANK ARMSTRONG, et al.,

Defendants.

Case No.: 97209

[PROPOSED] AMENDED AND  
RESTATED JUDGMENT AND  
PHYSICAL SOLUTION

[9-4-19 DRAFT]

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1 The Court, having considered the pleadings, the stipulations and motions of the parties,  
2 and the evidence presented, and being fully informed in the matter, approves the Amended and  
3 Restated Judgment and Physical Solution<sup>1</sup> contained herein. This Amended and Restated  
4 Judgment and Physical Solution is binding on all parties served or appearing in this action,  
5 including, without limitation, those parties that have stipulated to this Amended and Restated  
6 Judgment and Physical Solution, and their successors-in-interest.

7 1. Definitions. As used in this Amended and Restated Judgment and Physical  
8 Solution, the following terms, words, and phrases shall have the following meanings:

9 (a) "AFY" means acre feet per year.

10 (b) "Amended Judgment" means this Amended and Restated Judgment and Physical  
11 Solution, as may be amended from time to time.

12 (c) "Artificial Replenishment" or "Artificially Replenished" or any other variant of  
13 such words means or refers to the replenishment of the Cummings Basin achieved by the  
14 spreading of Imported Water in facilities where the District meters such replenishment which  
15 percolates into the Cummings Basin. Artificial Replenishment does not include Return Flows  
16 from Imported Water.

17 (d) "Banked Water Reserve Account" or "BWRA" means that quantity of Imported  
18 Water stored in the Basin pursuant to a water banking agreement with the District by means of  
19 Artificial Replenishment, surface recharge, in-lieu recharge or other means.

20 (e) "BVCSD" means Bear Valley Community Services District.

21 (f) "Calendar Year" is the twelve month period commencing January 1 and ending  
22 December 31 of the designated year.

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25 <sup>1</sup> A "physical solution" describes an agreed upon or judicially imposed resolution of conflicting  
26 claims in a manner that advances the constitutional rule of reasonable and beneficial use of the  
27 state's water supply. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288.) It is  
28 defined as an "equitable remedy designed to alleviate overdrafts and the consequential depletion  
of water resources in a particular area, consistent with the constitutional mandate to prevent  
waste and unreasonable water use and to maximize the beneficial use of this state's limited  
resource." (*California American Water v. City of Seaside* (2010) 183 Cal.App.4th 471, 480.)

1 (g) “CDCR” means the California Department of Corrections and Rehabilitation.

2 (h) “Cummings Basin” or “Basin” is that certain groundwater basin underlying the  
3 “Cummings Basin Area.”

4 (i) “Cummings Basin Area” consists of the territory within the boundaries  
5 established by the Court in the Judgment as described in Appendix 1 to this Amended Judgment.

6 (j) “Cummings Basin Watershed” is that territory constituting the watershed of  
7 Cummings Basin and is that territory within the boundaries as described and depicted in  
8 Appendix 2 to this Amended Judgment.

9 (k) “Cummings Basin Groundwater Model” means the computerized calibrated  
10 numerical groundwater model as presented in that certain report dated March 15, 2015, written  
11 by Fugro Consultants, Inc., as may be updated from time to time. A copy of the report is  
12 available on the District’s website.

13 (l) “District” means the plaintiff Tehachapi-Cummings County Water District.

14 (m) “District Conjunctive Use Customers” means BVCSD, CDCR, SSCSD and any  
15 other Persons having contracted or who may hereafter contract with the District for the purchase  
16 of Imported Water percolating into the Cummings Basin as either Return Flows from Imported  
17 Water or by the Artificial Replenishment of Imported Water.

18 (n) “Extraction,” “Extractions,” “Extracting,” “Extracted,” and other variations of the  
19 same noun and verb, mean and refer to pumping, taking or withdrawing groundwater from the  
20 Cummings Basin by any manner or means whatsoever.

21 (o) “Extractor” means any Person Extracting groundwater from the Cummings Basin  
22 and any Overlying Owner on whose land groundwater is Extracted from the Cummings Basin.

23 (p) “Imported Water” means water that the District has brought into the Cummings  
24 Basin Area from a non-tributary source, including, but not limited to, State Water Project water.

25 (q) “Irrigation,” “Irrigation Water,” “Irrigation Use” and other variations of the same  
26 words means the use of water and water used primarily in the production of plant crops or  
27 livestock for commercial purposes.

28

1 (r) "Judgment" means the Judgment entered in this action on March 6, 1972, which  
2 was partially reversed on appeal (see 49 Cal.App.3d 992).

3 (s) "Municipal & Industrial Water," "M&I Water," "Municipal & Industrial Use,"  
4 and other variations of the same words means all those uses of water common to the municipal  
5 water supply of a city, town, or other similar population group, including uses for domestic  
6 purposes, uses for the purposes of commerce, trade, or industry, and any other use incidental  
7 thereto for any beneficial purpose.

8 (t) "Native Groundwater" means naturally-occurring water beneath the surface of the  
9 Cummings Basin Area, including Return Flows from such water, but excluding Artificial  
10 Replenishment and Return Flows from Imported Water.

11 (u) "Natural Replenishment" means and includes all processes, other than Artificial  
12 Replenishment and Return Flows from Imported Water, by which water may become a part of  
13 the groundwater supply of the Cummings Basin, including, without limitation, rainfall, mountain  
14 front runoff, Return Flows from applied Native Groundwater, recharge from stream percolation,  
15 and net recharge from bedrock (inflow less outflow).

16 (v) "Natural Safe Yield" is the maximum quantity of groundwater, not in excess of  
17 the long-term average annual Natural Replenishment, which may be Extracted annually from the  
18 Cummings Basin without any net change in Native Groundwater storage in the Cummings Basin  
19 and without requiring any Artificial Replenishment of the Cummings Basin, said maximum  
20 quantity being determined without reference to such Artificial Replenishment of Cummings  
21 Basin as might be accomplished from time to time. Imported Water Return Flows are not  
22 included in Natural Safe Yield.

23 (w) "Overdraft" is the condition of the Basin resulting from Extractions of Native  
24 Groundwater in any given Calendar Year or Calendar Years in excess of the Natural Safe Yield.

25 (x) "Overlying Owner" means a Person who owns land in the Cummings Basin Area.

26 (y) "Overlying Use" means the reasonable and beneficial use of groundwater  
27 Extracted from the Cummings Basin on land within the Cummings Basin Area. Overlying Use  
28 does not include the use of water sold by a public agency or public utility Extracted from the

1 Cummings Basin, notwithstanding the place of use is within the Cummings Basin Area (*San*  
2 *Bernardino v. Riverside* (1921) 186 Cal. 7).

3 (z) “Party” means a party to this action, or a successor or assign of a party.

4 (aa) “Person” or “Persons” include individuals, partnerships, associations,  
5 corporations, governmental agencies, and any and all types of entities.

6 (bb) “Return Flows” means applied water that is not transpired or evaporated but has  
7 percolated into the Cummings Basin.

8 (cc) “SSCSD” means Stallion Springs Community Services District.

9 (dd) “Surface Diversion” is a diversion of waters flowing on the surface within the  
10 Cummings Basin Watershed (including the Cummings Basin Area), which diversion is made  
11 principally for use of the water or storage for future use, and not primarily for some other  
12 purpose, e.g., flood control or drainage.

13 (ee) “Use,” whether capitalized or not, includes impounding of water for aesthetic or  
14 recreational purposes.

15 (ff) “Water” includes only non-saline water, which is that having less than 1,000 parts  
16 of chlorides to 1,000,000 parts of water.

17 (gg) “Watermaster” means the District, or any successor Watermaster appointed by the  
18 Court under its reserved jurisdiction.

19 (hh) “Watermaster’s Hydrogeological Consultant” means a groundwater  
20 hydrogeologist, or a firm of groundwater hydrogeologists, retained by the Watermaster to  
21 maintain and update the Cummings Basin Groundwater Model, periodically report on the  
22 hydrological condition and water balance of the Cummings Basin, periodically redetermine  
23 Natural Safe Yield, and perform other hydrogeological consulting services concerning the  
24 Cummings Basin as requested by the Watermaster.

25 (ii) “Water Year” means the twelve month period commencing October 1 of each  
26 year and ending September 30 of the following year.

27 2. History of the Case. The District filed this action in October 1966, alleging that  
28 the Cummings Basin had been in a state of Overdraft since 1949 and asking the Court, among

1 other things, to adjudicate the groundwater rights of the parties and enjoin the parties from  
2 Extracting more than the Natural Safe Yield of the Basin. The District and most of all of the  
3 appearing defendants entered into stipulations allocating “Base Water Rights” to the Extractors  
4 based on the mutual prescription doctrine articulated by the California Supreme Court in  
5 *Pasadena v. Alhambra* (1949) 33 Cal.2d 908. The State of California on behalf of CDCR did not  
6 stipulate, and the case went to trial from June 14-22, 1971. The Judgment, entered on March 6,  
7 1972, determined that the safe yield of the Basin was 4,090 AFY; awarded “Base Water Rights”  
8 to the Extractors, including 308 AFY to CDCR, as per the stipulations; appointed the District as  
9 Watermaster and reserved continuing jurisdiction. The State of California on behalf of CDCR  
10 appealed. The Fifth District Court of Appeal in its 1975 decision (49 Cal.App.3d 992) rejected  
11 the trial court’s application of the mutual prescription doctrine, holding:

12 All of the parties to the action are overlying owners and all of the water pumped by  
13 these owners...is for overlying purposes; therefore, there are no appropriations of water  
14 in the action. *Pasadena v. Alhambra, supra*, and the other underground basin cases upon  
15 which the trial court relied in imposing a prescriptive rights solution involved  
16 controversies between overlying owners and appropriators. ... These cases hold that an  
17 appropriative taking of water which is not surplus is wrongful and may ripen into a  
18 prescriptive right against overlying owners and prior appropriators. Without  
19 appropriation, however, there is no paramount right which can be prescribed against.

20 (49 Cal.App.3d 992, 1000-1001.)

21 The Fifth District Court of Appeal also provided guidance in the determination of  
22 allocation of water where there is insufficient water for the current reasonable needs of all  
23 overlying owners, explaining that “The proportionate share of each owner is predicated not on  
24 his past use over a specified period of time, nor on the time he commenced pumping, but solely  
25 on his current reasonable and beneficial need for water,” and summarizing the factors to be  
26 considered as follows:

27 ... many factors are to be considered in determining each owner’s proportionate share: the  
28 amount of water available, the extent of ownership in the basin, the nature of the projected  
use – if for agriculture, the area sought to be irrigated, the character of the soil, the  
practicability of irrigation, i.e. the expense thereof, the comparative profit of the different  
crops which could be made of the water on the land – all these and many other  
considerations must enter into the solution of the problem.

(49 Cal.App.3d 992, 1001-1002.)

1           The Judgment was reversed insofar as it limited CDCR’s Extractions to 308 AFY. The  
2 action was remanded to the trial court with directions to declare that CDCR’s right to pump is  
3 correlative and equal to the water rights of the other Overlying Owners in the Basin, and to make  
4 further inquiry and adjudication of the water rights of the other Overlying Owners in the Basin  
5 consistent with the views expressed in the opinion, thereby voiding the “Base Water Rights”  
6 allocated to Overlying Owners in the Judgment. In all other respects, the Judgment was affirmed.

7           Following remand, in 1976 the parties filed various motions in the trial court, including  
8 competing motions by the District and the State for adoption of proposed amended findings of  
9 fact and conclusions of law and an amended judgment. The trial court held hearings on such  
10 motions in October 1976. A further hearing was scheduled but by stipulation of the parties in  
11 January 1977 the further hearing on such motions was taken off calendar and was never reset.  
12 Thereafter, the case itself lay dormant for more than forty years, though the District has acted as  
13 Watermaster since 1972 and continues filing annual reports with the Court. In 2008, CDCR by  
14 contract with the District agreed to limit its Extractions to 565 AFY and to purchase State Water  
15 Project water from the District for all its Water needs at its facilities overlying the Basin, and at  
16 any additional facilities which may be constructed on CDCR’s property in the Cummings Basin  
17 in the future, in excess of 565 AFY.

18           Pursuant to paragraph 3 of the Judgment, the Court retained “continuing jurisdiction for  
19 all purposes including but not limited to: the imposition of a physical solution in the Cummings  
20 Basin, including a restriction on ground water pumping to quantities which will not exceed the  
21 safe yield from time to time of Cummings Basin, 4,090 acre-feet per year; enjoining extractions  
22 of ground water from Cummings Basin except to the extent of the parties' rights proportional to  
23 the safe yield of Cummings Basin from time to time and except as may be provided under any  
24 physical solution adopted pursuant to said continuing jurisdiction; expand, amend and alter the  
25 powers, duties and responsibilities of the Watermaster hereafter set forth; and determining any  
26 and all other matters which might become material under the Judgment.”

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1 The District's groundwater hydrogeologist, Fugro Consultants, Inc., developed the  
2 Cummings Basin Groundwater Model based on hydrogeological data from 1981 through 2013,  
3 which study period is generally representative of slightly above average rainfall conditions, and  
4 determined in its Report dated March 15, 2015, that the Natural Safe Yield of the Cummings  
5 Basin was 2,990 AFY, not 4,090 AFY. Pursuant to a stipulation between the District and certain  
6 Extractors and certain District Conjunctive Use Customers, on \_\_\_\_\_, 2019, the  
7 District filed a motion seeking an order amending and restating the Judgment as set forth in this  
8 Amended and Restated Judgment and Physical Solution. Each of the stipulating Overlying  
9 Owners and certain District Conjunctive Use Customers (i) is currently Extracting, (ii) intends  
10 and threatens to Extract, or (iii) is an Overlying Owner on whose land groundwater is currently  
11 being Extracted. Substantially all of the groundwater that has been Extracted in the previous five  
12 years and is annually Extracted has been and is being Extracted and used on lands owned by the  
13 stipulating Overlying Owners.

14 3. Adjustment of Natural Safe Yield. The Court determines that the Natural Safe  
15 Yield of the Cummings Basin is 2,990 AFY based on the Cummings Basin Groundwater Model.

16 4. Periodic Redetermination of Natural Safe Yield.

17 (a) Method and Frequency. The Watermaster shall require the Watermaster's  
18 Hydrogeological Consultant to input recharge, Extractions, and other hydrological data into the  
19 Cummings Basin Groundwater Model, and prepare supplemental reports of the Cummings  
20 Basin's condition every eight years, which supplemental reports shall include a redetermination  
21 of the Natural Safe Yield based on all relevant data from 1981, including the eight years of data  
22 since the last report, and a determination whether the total Extractions by all Overlying Owners  
23 in any of such eight years exceeded the Natural Safe Yield, and if so, the amount of the  
24 Overdraft. The first supplemental report shall be prepared as soon as practicable early in  
25 Calendar Year 2025. Subsequent supplemental reports shall incorporate eight more years of data  
26 until at least fifty years of data have been gathered, at which time the most recent fifty years of  
27 data shall be utilized in subsequent updates of the Cummings Basin Groundwater Model. The  
28 Watermaster Hydrogeological Consultant shall consider all fifty years of data, but shall have the

1 discretion to include or exclude additional years of data to achieve a balanced representative  
2 model that includes an equal number of wet and dry cycles.

3 (b) Public Review and Comment. The Watermaster shall post such supplemental  
4 report on the District's website, make copies available for public inspection at its office, and  
5 notify all Parties and known current Extractors by mail of its availability. Any Party, Overlying  
6 Owner, or Extractor may, at its own expense, retain an independent hydrogeological consultant  
7 to review the data and the re-determined Natural Safe Yield. Upon written request, the  
8 Watermaster shall make available to any such retained independent hydrogeological consultant  
9 the data and methodology employed by the Watermaster's Hydrogeological Consultant and shall  
10 provide such independent hydrogeological consultant reasonable access to the Watermaster's  
11 Hydrogeological Consultant for purposes of discussing the data, methodology and re-determined  
12 Natural Safe Yield. The Watermaster shall hold at least one public hearing, and provide  
13 opportunities in advance of the public hearing for Extractors and Parties to provide comment, on  
14 the supplemental report before fixing the Natural Safe Yield for the subsequent eight years (for  
15 example, the first supplemental report will redetermine the Natural Safe Yield for Calendar  
16 Years 2026 through 2033). Written notice of such hearing shall be mailed to all known  
17 Extractors and Parties at least 60 days prior to the hearing and shall be published once in the  
18 manner provided in Government Code section 6061 at least 45 days prior to the hearing. At such  
19 hearing, any Party, any Overlying Owner and any Extractor shall be afforded an opportunity to  
20 present evidence to the Watermaster, including oral and written testimony, as to why the  
21 Watermaster's Hydrogeological Consultant's redetermination of the Natural Safe Yield and  
22 calculation of Overdraft should not be adopted by the Watermaster. Following the hearing, the  
23 Watermaster shall make a motion to the Court to adopt its determination of Natural Safe Yield  
24 for the next eight years.

25 5. Annual Allocation of Natural Safe Yield. The rights of the Overlying Owners to  
26 Extract Native Groundwater from the Cummings Basin are correlative and in the aggregate may  
27 not exceed the Natural Safe Yield. Henceforth, the Watermaster shall allocate annually the  
28 Natural Safe Yield among the Overlying Owners for each Calendar Year as follows:

1 (a) Municipal & Industrial (M&I) Water Use.

2 (i) CDCR shall be entitled to Extract an annual M&I allocation of 565 AFY which  
3 shall be used for reasonable and beneficial M&I uses at its correctional facilities in the  
4 Cummings Valley (CDCR). All Water requirements at CDCR's facilities in the Cummings Basin  
5 in excess of 565 AFY shall be met by contract for imported water between CDCR and the  
6 District as set forth in Appendix 3 and made a part hereof by reference, which may be extended  
7 or amended from time to time.

8 (ii) All other Overlying Owners who are Parties shall be entitled to Extract for  
9 reasonable and beneficial M&I uses on their overlying lands the following initial annual  
10 allocations:

<u>Circumstance of Use</u>	<u>Annual M&amp;I Allocation</u>
Single Family Residences	
Parcel size 1.00 acres or less	0.3 AFY
Parcel size 1.01 – 3.00 acres	0.5 AFY
Parcel size 3.01 – 10.00 acres	0.75 AFY
Parcel size 10.01 – 20 acres	1.0 AFY
Parcel size 20.01 and larger	1.25 AFY
Multifamily Residential	0.20 AFY per unit
Service Commercial	0.17 AFY per 1000 sq. ft. of building
Retail	0.07 AFY per 1000 sq. ft. of building
Office	0.06 AFY per 1000 sq. ft. of building
Industrial	0.17 AFY per 1000 sq. ft. of building
Hotel/Motel	0.13 AFY per room
School	0.06 AFY per 1000 sq. ft. of building
Public Pool	0.21 AFY per 1000 sq. ft. of surface area
Park/Schoolyard Irrigation	2.5 AFY per acre of planted area

11 (iii) The annual M&I allocations for Calendar Year 2021 are as set forth in  
12 Appendix 4 hereto. Any Overlying Owner desiring an ongoing annual M&I allocation for 2022  
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1 and subsequent years, other than CDCR, shall submit an application to the Watermaster on or  
2 before January 15 of 2022 or of the first year after 2022 that the Overlying Owner desires an  
3 ongoing M&I allocation, on such form and containing such information as specified by  
4 Watermaster rule. Each application shall be signed by the Overlying Owner, or Person  
5 designated by an Overlying Owner to execute applications on its behalf, and shall contain the  
6 following verification:

7           The undersigned applicant does hereby declare under penalty of perjury  
8           under the laws of the State of California that the facts set forth in this  
9           application are true and correct and that I intend in good faith to use the  
          water at the location stated in the application.

10           Any new M&I allocation shall be operative in the Calendar Year in which the application  
11 is timely submitted to and approved by the Watermaster. Once the Watermaster approves an  
12 application for an M&I allocation, the allocation shall remain fixed until further direction of the  
13 Watermaster or order of the Court.

14           For any type of M&I use under circumstances not set forth in the above table, the  
15 Watermaster shall determine a reasonable annual M&I allocation based upon its investigation of  
16 any available data for or studies of the reasonable M&I water requirements for such use under  
17 the same or similar circumstances, employing the best available water and cost effective  
18 conservation practices, including data submitted by the Overlying Owner requesting an annual  
19 M&I allocation for such use.

20           Several factors may cause per-capita M&I water demand to decline over time, including  
21 (1) new state regulations on urban water use, (2) construction of new water-efficient housing, (3)  
22 replacement of plumbing fixtures with new high-efficiency fixtures in older homes, and (4)  
23 adoption of the state's Model Water Efficient Landscape Ordinance to the residential sector.  
24 Therefore, the Watermaster may from time to time reduce the annual M&I allocation for any  
25 circumstance of M&I use, other than CDCR's annual allocation as set forth above, to reflect  
26 current data on typical M&I water consumption under such circumstance of use, employing best-  
27 available and cost-effective water conservation practices.

28           Prior to March 1 of each year, the Watermaster shall (i) determine the annual M&I  
allocations for all Overlying Owners with existing applications and new applicants who timely

1 submitted a complete application, with the exception of CDCR which has been agreed to by  
2 contract, and (ii) post on the District's website and mail to CDCR and each applicant a proposed  
3 list of all annual M&I allocations for that year. Before adopting annual M&I allocations for 2022  
4 and subsequent years, the Watermaster shall conduct at least one public hearing per year, at  
5 which CDCR, each applicant, any other Overlying Owner, or Party to the action shall be  
6 afforded the opportunity to present oral and documentary evidence as to why the Watermaster  
7 should not adopt any proposed annual M&I allocation. At least ten days prior to the hearing,  
8 written notice of such hearing shall be (a) posted at the Watermaster's office, (b) mailed to  
9 CDCR and each applicant and (c) published once in the manner provided in Government Code  
10 section 6061.

11 (b) Irrigation Water Use. After deducting the annual M&I and CDCR allocations as  
12 determined in subparagraph (a) above, the remaining Natural Safe Yield shall be allocated  
13 annually by the Watermaster on a net irrigated acre basis among all Overlying Owners, other  
14 than CDCR and owners of occupied single family dwellings on parcels of 5.0 acres in size or  
15 less, who are parties to this action and who timely apply for an annual Irrigation allocation to the  
16 Watermaster. Any Overlying Owner desiring an annual Irrigation allocation for 2022 and  
17 subsequent years shall file an application on or before January 15 of such year on a form  
18 promulgated by Watermaster rule, containing the following information for each parcel for  
19 which an annual Irrigation allocation is requested:

- 20 1) The Kern County Assessor's Parcel Number (APN);
- 21 2) Number of acres to be irrigated (net acreage) with a plat showing the location and  
22 dimension of each field or area to be irrigated;
- 23 3) The dates during the year that groundwater will be applied for Irrigation;
- 24 4) The State Well Number or location of the well from which groundwater will be  
25 Extracted for use on such parcel;
- 26 5) A plat, using a Kern County Assessor's Map or Maps as the base, showing all the  
27 parcels, all the net acreage to be irrigated and all the source wells of the applicant that are located  
28 within the Cummings Basin Area;

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6) Any other information reasonably requested by the Watermaster.

Each application shall be signed by the Overlying Owner, or Person designated by an Overlying Owner to execute applications on his behalf, and shall contain the following verification:

The undersigned applicant does hereby declare under penalty of perjury under the laws of the State of California that the facts set forth in this application are true and correct and that I intend in good faith to irrigate the area depicted on the application in Calendar Year \_\_\_\_\_.

The Watermaster, before March 1 of each Calendar Year, shall (i) calculate the total net acres of land to be irrigated for which applications have been timely filed, adjusted for time based on the dates during the year that groundwater will be applied for Irrigation, (ii) divide the remaining Natural Safe Yield remaining after subtracting the annual M&I and CDCR allocations from the Natural Safe Yield by the total adjusted net acres of land to be irrigated to determine the annual Irrigation allocation per adjusted net irrigated acre for that year, and (iii) publish on the District’s website, post at the Watermaster’s Office and mail to each applicant a summary of the Watermaster’s calculation of the annual Irrigation allocations and the Watermaster’s proposed determination of each parcel’s annual Irrigation allocation. For example, if the total adjusted net acreage is 2,500 acres, and the Natural Safe Yield available for Irrigation is 2,000 acre-feet, then the allocation would be 0.8 acre-feet per acre (2,000 af / 2,500 ac = 0.8 af/ac). Before adopting the annual Irrigation allocations, the Watermaster shall conduct at least one public hearing. At least ten days prior to the hearing, written notice thereof shall be (a) posted at the Watermaster’s office, (b) mailed to each applicant, and (c) published once in the manner provided in Government Code section 6061. At the hearing, any applicant, Overlying Owner or Party to the action may submit oral and documentary evidence as to why the Watermaster’s determination does or does not accord with the provisions of this paragraph. Any Overlying Owner requesting an annual M&I allocation, other than CDCR and owners of parcels of 5.0 acres or less in size improved with single family dwellings, may also request an annual Irrigation allocation for the commercial Irrigation of crops, orchards, or other plants on their overlying lands. The annual Irrigation allocations for 2021 are set forth in Appendix 5 hereto.

(c) Parcels Both Within and Outside the Cummings Basin Area. For any parcel lying partially inside and partially outside the Cummings Basin Area the annual allocation under

1 subparagraphs (a) and (b) shall be determined based only on the water use occurring on that  
2 portion of the parcel lying within the Cummings Basin Area.

3 (d) Audits. From time to time, the Watermaster shall audit some or all of the  
4 applications for annual allocations to determine the accuracy of the factual statements and  
5 representations contained therein. Such audit may include, in the case of an Irrigation allocation,  
6 a comparison of the actual acres to which groundwater was applied as against the acreage the  
7 applicant represented in its application would be irrigated, and/or a comparison of the actual  
8 period of the year during which a parcel was in fact irrigated as against the period of the year  
9 represented in the application. In the case of a M&I allocation, an audit may include a  
10 comparison of any represented building size, circumstance of use, or other factual statement as  
11 against the size, circumstance of use, or any other fact represented in the application. The  
12 applicant shall cooperate with the Watermaster during the course of an audit by allowing the  
13 Watermaster access to Overlying Lands and within buildings and structures thereon and to all  
14 records pertaining to his actual water Extractions and use. An applicant shall have the burden of  
15 proving by a preponderance of evidence that the facts and representations of intention as set forth  
16 in his application for the year subject to audit were true and accurate.

17 (e) Consequences of an Inaccurate Application. If as a result of an audit the  
18 Watermaster determines that a prior year's application contained an inaccurate statement of fact  
19 or an inaccurate statement of intention, and, as the result of which the applicant received an  
20 annual allocation five percent (5%) or more greater than the annual allocation the applicant  
21 would have received had the application been accurate, the Watermaster in the course of  
22 determining such applicant's allocation for the following year shall deduct the full amount of  
23 such excess from the annual allocation which the applicant would otherwise receive. Any  
24 Overlying Owner or designated representative who files two inaccurate annual applications in  
25 any five year period, in addition to the consequences set forth above, shall be subject to contempt  
26 of judgment proceedings initiated by the Watermaster and, if determined by the Court to be in  
27 contempt of this Amended Judgment, following the statutory procedures governing civil  
28 contempt, shall be subject to such punishment as the Court determines is appropriate under the

1 circumstances, including, but not limited to, (a) a civil fine to be paid to the Watermaster to be  
2 applied against Watermaster costs of carrying out the terms and provisions of this Amended  
3 Judgment, (b) a forfeiture of the right to apply for an annual allocation for any number of years  
4 determined appropriate by the Court under the circumstances, (c) a permanent forfeiture of  
5 Overlying Rights, or (d) a combination of (a) and (b) or of (a) and (c).

6 6. Rights of District Conjunctive Use Customers.

7 (a) Except as provided in Paragraph 5(a) in the case of CDCR and as provided in  
8 Paragraph 6(b), the District Conjunctive Use Customers shall only Extract from the Cummings  
9 Basin an amount of water less than or equal to the amount of Imported Water Artificially  
10 Replenished into the Cummings Basin, net of spreading losses, and purchased from the District  
11 pursuant to contract. This longstanding practice is consistent with holdings of the California  
12 Supreme Court (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77 and *City of*  
13 *Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 123, 257-261) and other court holdings.

14 (b) Notwithstanding Paragraph 6(a), SSCSD and BVCSD shall have the right (i) to  
15 Extract the annual M&I allocation of any Overlying Owners within the boundaries of SSCSD or  
16 BVCSD who have executed and recorded agency agreements running with the land wherein such  
17 Overlying Owners appoint SSCSD or BVCSD as their agent to exercise the overlying rights of  
18 such Overlying Owners through wells and distribution systems owned and operated by such  
19 agent, and (ii) to the extent SSCSD and BVCSD own lands overlying the Basin, to apply for and  
20 Extract annual allocations in the manner provided in Paragraph 5 above for reasonable and  
21 beneficial use of groundwater on such lands for SSCSD and BVCSD purposes, such as, within  
22 SSCSD and BVCSD offices and facilities and to irrigate SSCSD and BVCSD parks and other  
23 lands. SSCSD and BVCSD shall provide the Watermaster with copies of all such agency  
24 agreements. Before January 15 of each year, and as part of the annual application process,  
25 SSCSD and BVCSD each shall file one application for all new Overlying Owners within their  
26 boundaries who have designated SSCSD and BVSCD as their agent to exercise their overlying  
27 rights, containing for each separate APN all the information required on an application as set  
28 forth in Paragraph 5 above.

1           7.       Rights of Mutual Water Companies Formed By Overlying Owners. A mutual  
2 water company whose shareholders are limited to Overlying Owners of specified lands within  
3 the Cummings Basin Area, whose stock is forever appurtenant to such lands, and whose  
4 shareholders delegate to such mutual water company the exclusive right to exercise their  
5 overlying rights in the Cummings Basin through a common well or wells and a common  
6 distribution system owned by such mutual water company, may apply for an annual allocation in  
7 the mutual water company's name on behalf of its shareholders. However, any such company's  
8 annual allocation may not exceed the aggregate of the annual allocations that would have been  
9 separately made to the company's shareholders. The application filed by any such company shall  
10 contain all the information required pursuant to Paragraph 5 above for each shareholder's parcel  
11 on which groundwater will be used. Such mutual water company shall also file with its first  
12 application a copy of its Motion to Intervene as a Defendant (see Paragraph 10 below) and copies  
13 of its Articles of Incorporation, By-Laws, and any other documents evidencing the factors  
14 necessary to prove that the Extractions of such company will be a valid Overlying Use and not  
15 an appropriation.

16           8.       Rights of Plaintiff District. Except as to CDCR, which will be agreed to by  
17 contract, the District owns and may hereafter Extract all Imported Water which has entered the  
18 Cummings Basin before entry of this Amended Judgment, or which may thereafter enter into the  
19 Cummings Basin through Artificial Replenishments or as Return Flows following use of  
20 Imported Water on the surface in the Cummings Basin Area.

21           9.       Scope of Adjudication. Additional Extractors, including Overlying Owners, have  
22 been added as Parties to the action by stipulation and order and a Supplemental Notice of  
23 Pending Action was recorded in Kern County Official Records concurrently with the filing of the  
24 District's motion for an order amending and restating the Judgment as set forth in this Amended  
25 Judgment. The terms and provisions of this Amended Judgment shall be binding upon and inure  
26 to the benefit of not only the Parties that have been served or appeared in this action, but also  
27 their successors and assigns in ownership of lands within the Cummings Basin Area and the  
28 Cummings Basin Watershed forever. The adjudication of the overlying groundwater rights of the

1 Overlying Owner defendants is not only “inter se” with respect to the rights of the Parties, but is  
2 also “in rem,” and shall be binding upon and inure to the benefit of not only the named  
3 Overlying Owner defendants but also their successors and assigns in ownership of lands within  
4 the Cummings Basin Area and the Cummings Basin Watershed forever. The Watermaster shall  
5 record a certified copy of this Amended Judgment in the Kern County Official Records.

6 10. New Extractors Must Become Parties. Notwithstanding the provisions of  
7 Paragraph 9 above, any Overlying Owner who is not a Party to this action and subject to this  
8 Amended Judgment must formally become a Party to this action before applying for an annual  
9 allocation. A new Extractor Overlying Owner may formally become a Party by executing and  
10 filing with the Court and serving on all Parties a Motion to Intervene as a Defendant in the form  
11 attached hereto as Appendix 6, serving a copy thereof upon the Watermaster, and complying  
12 with this Amended Judgment and the Watermaster rules. Any Party may initiate legal  
13 proceedings to compel the joinder of any nonparty Overlying Owner on whose land groundwater  
14 is being Extracted or who seeks to Extract groundwater from the Cummings Basin. Any new  
15 Party is subject to all terms of this Amended Judgment in the same manner as any current Party  
16 in this action.

17 11. Metering. Except for existing single-family residential wells Extracting less than  
18 2 AFY, all Extraction wells shall be equipped with a cumulative metering device by January 1,  
19 2021. The owners of all existing single-family residential wells Extracting less than 2 AFY, shall  
20 install a cumulative metering device by January 1, 2025. All cumulative metering devices shall  
21 meet or exceed the criteria established by rule promulgated by the Watermaster.

22 12. Monthly and Annual Reports of Extractions and Use.

23 (a) Reporting. Each Extractor who must meter Extractions as provided in Paragraph  
24 11 above shall render to the Watermaster by the 25th day of the following month a monthly  
25 report of water the Extractor produced from Cummings Basin on forms provided by the  
26 Watermaster. Notwithstanding the foregoing, the Watermaster may permit a lesser frequency of  
27 reporting as to any Party, or as to any Party during portions of a year, and adjust any forms  
28 accordingly. Each Party shall file with the Watermaster on or before February 1 of each year an

1 Annual Report of Extractions and Use for the prior Calendar Year on such form promulgated by  
2 Watermaster rule. Such form, at a minimum, shall require each Extractor for each of its wells to  
3 report the cumulative meter reading as of the last day of each month of such year; the quantity of  
4 groundwater, expressed in acre feet, Extracted through such well during each month of such  
5 year; the amount of groundwater, expressed in acre feet, applied to or used on each APN  
6 supplied by such well during each month; the total quantity in acre feet of groundwater Extracted  
7 through such well during the entire year; and the total quantity in acre feet of groundwater  
8 applied to or used on each parcel during the entire year.

9 (b) Failure to Report. If an Extractor fails to timely file monthly reports or the Annual  
10 Report with the Watermaster, such Extractor shall not receive an Annual Allocation for the then-  
11 current Calendar Year, unless the Watermaster determines in its discretion that the failure to file  
12 the report or reports was excusable and not prejudicial to any other Extractor, and that such party  
13 has since made the required filing. The party who failed to timely file shall have the burden to  
14 establish that the failure to timely file was excusable and not prejudicial to any other Extractor.

15 13. Consequences of Extracting More Than Annual Allocation. Except as otherwise  
16 provided, an Overlying Owner, other than CDCR who is governed by contract with the District,  
17 the District's Conjunctive Use Customers acting as agent for their Overlying Owners as provided  
18 at Paragraph 6(b), or any Overlying Owner who has banked imported water in the Basin, may  
19 not Extract in any year more than its approved annual allocation. An Overlying Owner who over-  
20 Extracts and who has created a Banked Water Reserve Account by purchasing and storing in the  
21 Cummings Basin Imported Water may direct the Watermaster to reduce such Overlying Owner's  
22 Banked Water Reserve Account by all or a portion of the amount of the over-Extraction. To the  
23 extent that an Overlying Owner exceeds its approved annual allocation and does not direct a  
24 reduction in its Bank Water Reserve Account as provided above, such Overlying Owner must  
25 pay the Watermaster on or before March 1 of the following year an Over-Extraction Fee equal to  
26 1.3 times the District's then-current Term M&I Rate or Agricultural Rate, as the case may be,  
27 plus all surcharges for spreading losses and for capital, operations, maintenance and replacement  
28 costs of the District's recharge facility, per acre foot times the amount of the over-Extraction. No

1 application for a subsequent annual allocation shall be considered by the Watermaster until the  
2 Over-Extraction Fee is paid in full. An Overlying Owner that over-Extracts by more than five  
3 percent of its allocation and its Banked Water Reserve Account taken together in more than two  
4 years in any five year period may, in addition to paying the Over-Extraction Fee, be subject to  
5 civil contempt proceedings before this Court, initiated by the Watermaster and will be subject to  
6 the same punishments, if found guilty of contempt, as set forth in Paragraph 5(e) above. The  
7 District at its option may collect any unpaid Over-Extraction Fee by adding such fees to the  
8 affected parcels' ad valorem tax bill and may record a notice of lien in the same fashion as for  
9 delinquent water charges provided in the County Water District Law (Water Code 30000 et seq.).  
10 Over-Extraction Fees will be used to provide Artificial Replenishment in the Cummings Basin.

11 14. Parties Enjoined as to Surface Diversions and Exports. As provided in the original  
12 Judgment, and except for lawful exports of Extracted Artificially Replenished Imported Water as  
13 provided in Paragraph 6 above, the Parties are enjoined and restrained from (a) exporting outside  
14 of the Cummings Basin Area any Native Groundwater, and (b) diverting any surface waters  
15 within the Cummings Basin Watershed.

16 15. Watermaster Duties and Powers. In addition to the powers and duties of the  
17 Watermaster as set forth above, the Watermaster shall:

18 (a) Establish written rules through public process consistent with this Amended  
19 Judgment and necessary for the orderly and efficient administration and operation of the  
20 Cummings Basin and implementing the established policy of this State that its water resources,  
21 including groundwater of the Cummings Basin, be put to the fullest and widest use possible  
22 without waste, including, but not limited to, rules (i) governing the annual allocation process and  
23 the metering and reporting of Extractions, and (ii) mandating the implementation by Extractors  
24 of best available water conservation practices and technology. The Parties are hereby ordered to  
25 comply with Watermaster rules.

26 (b) File annually with the Court and serve upon the Parties a report of the Cummings  
27 Basin's condition and operations in the prior Calendar Year, including an accounting of all  
28 Extractions by Overlying Owners, all Extractions of Imported Water, Artificial Replenishment,

1 any Over-Extractions by Overlying Owners, any alleged violations of any injunctive or other  
2 provisions of this Amended Judgment, and any other facts which may be of interest to the  
3 Watermaster, the Parties and the Court.

4 (c) Maintain and operate existing District-owned or leased Artificial Replenishment  
5 facilities to correct Overdraft and acquire additional lands and rights-of-way needed to construct,  
6 operate and maintain additional Artificial Replenishment facilities required to correct Overdraft  
7 in the future.

8 16. Annual Administrative Assessment. At the same time the District makes and  
9 adopts its annual budget for District operations, the Watermaster shall make and adopt a budget  
10 estimating its costs of carrying out its duties hereunder in the following year, which shall include  
11 any deficits incurred from past year's operations. At the same time the District determines and  
12 levies the amount of ad valorem taxes to be assessed on District lands in the following year, the  
13 Watermaster shall levy an Annual Administrative Assessment required to meet the anticipated  
14 costs set forth in the adopted budget on all Extractors receiving an annual allocation that year.  
15 The Annual Administrative Assessment shall be levied on each Extractor's parcel in the same  
16 proportion that each parcel's total annual allocation expressed in acre feet bears to all of that  
17 year's annual allocations combined, also expressed in acre feet, and shall be collected in the  
18 same manner as ad valorem taxes are imposed and collected by the District, namely, as an  
19 assessment noted on that parcel's Kern County General Ad Valorem Tax Bill. The Annual  
20 Administrative Assessment shall be billed to CDCR, BVCSD, SSCSD, and other public  
21 agencies. Before adopting such budget and levying such assessment, the Watermaster shall  
22 conduct at least one public hearing at which any Extractor may present oral and documentary  
23 evidence as to why the Watermaster should not adopt such budget or such assessment. At least  
24 ten days prior to the hearing, written notice of the hearing shall be (a) posted at the  
25 Watermaster's office, (b) mailed to each Extractor, and (c) published once in the manner  
26 provided in Government Code section 6061. Any Party may appeal the Watermaster's adoption  
27 of such budget and levying of such assessment to the Court in accordance with Paragraph 18  
28 hereafter governing appeals of Watermaster decisions.

1           17.     Change in Point of Extraction and New Wells. A Party may change the point of  
2 Extraction or construct a new well provided that such changed point of Extraction or new well  
3 does not materially injure any other Party. A replacement well for an existing point of Extraction  
4 which is located within 300 feet of the existing well to be replaced shall not be considered a  
5 change in point of Extraction. Any Party seeking to change a point of Extraction or construct a  
6 new well shall notify the Watermaster and any owner of a well within one mile of such proposed  
7 new point of Extraction or new well of his intent to change a point of Extraction or construct a  
8 new well at least 120 days before changing a point of Extraction or commencing the drilling a  
9 new well. The proposed changed point of Extraction or new well shall also be reviewed by the  
10 Watermaster's Hydrogeological Consultant. If any well owner receiving such notice or the  
11 Watermaster's Hydrogeological Consultant believes that any Party will be materially injured by  
12 such changed point of Extraction or new well, the Watermaster will conduct at least one public  
13 hearing on the issue of material injury at which the proponent, any objecting Party and the  
14 Watermaster's Hydrogeological Consultant may present oral and documentary evidence. At least  
15 ten days prior to the hearing, written notice thereof shall be (a) posted at the Watermaster's  
16 office, (b) mailed to the proponent and any objecting Parties, and (c) published once in the  
17 manner provided in Government Code section 6061.

18           18.     Appeal of Watermaster Decisions.

19           (a)     Right to Appeal. Any Party affected by any decision or determination made by the  
20 Watermaster may appeal the same by filing with the Court and serving on the Watermaster  
21 within thirty (30) days from the date of such decision a Notice of Motion Seeking Order  
22 Overturning Watermaster Decision.

23           (b)     Preparation of Record. If the Watermaster held a public hearing before making  
24 the decision or determination subject to the appeal, (a) the appealing Party must have presented  
25 in person or in writing to the Watermaster prior to or at the public hearing the same grounds for  
26 objecting to such decision or determination as are advanced in the appeal, (b) the appealing Party  
27 shall have the burden and expense of preparing the complete administrative record of the  
28 Watermaster's decision, including the documentary evidence produced at such hearing and a

1 transcript of the hearing, if available, which record must be filed with the Court and served on  
2 the Watermaster within thirty (30) days after filing the Notice of Motion, and (c) the  
3 Watermaster shall have the right to supplement any incomplete administrative record submitted  
4 by the appealing Party.

5 (c) Hearing Process. The appealing Party shall request in its moving papers that the  
6 court hold a hearing on such motion between forty-five (45) and sixty (60) days of the filing of  
7 the Notice of Motion. The scope and inquiry of the Court, sitting without a jury, shall be *de novo*.  
8 If the Watermaster did not conduct a public hearing before making the decision or determination  
9 at which the appellant had the right to appear and present evidence and argument, the Court in its  
10 discretion shall determine how the appeal shall be conducted. If the Watermaster held a public  
11 hearing before making the decision or determination subject to the appeal, the appeal shall be  
12 based on the administrative record prepared pursuant to paragraph 18.(b) above, except that  
13 where the Court finds that there is relevant evidence that, in the exercise of reasonable diligence,  
14 could not have been produced or that was improperly excluded at the public hearing, the Court  
15 may admit the evidence at the hearing.

16 Any order deciding an appeal shall award costs to whoever prevails.

17 19. Actions Not Subject to CEQA Regulation. Nothing in this Amended Judgment, or  
18 the implementation thereof, or the rule making, decisions and other actions of the Watermaster  
19 pursuant to this Amended Judgment shall be deemed a “project” subject to the California  
20 Environmental Quality Act (“CEQA”). (See, e.g., *California American Water v. City of Seaside*  
21 (2010) 183 Cal.App.4th 471; *Hillside Memorial Park & Mortuary v. Golden State Water Co.*  
22 (2011) 205 Cal.App.4th 534.)

23 20. Designation of Address for Notice and Service. Each Party shall designate a name  
24 and address to be used for purposes of receiving all Watermaster communications, including  
25 notice of Watermaster hearings, and all subsequent notices and service herein, by filing in this  
26 action and with the Watermaster a written Designation of Name and Address in the form  
27 attached hereto as Appendix 7. A Party may change its designation by filing a new Designation  
28 in this action and with the Watermaster.

1           21.    Costs. Each Party shall bear their own attorney fees and costs incurred in  
2 connection with this action.

3           22.    Water Quality. Nothing in this Amended Judgment shall be interpreted or  
4 construed as relieving any Party of its responsibilities to comply with Federal, State and local  
5 governmental laws and regulations for the protection of water quality or the provisions of any  
6 permits, standards, requirements or orders promulgated thereunder. The District as Watermaster  
7 intends to protect and defend water quality of the Cummings Basin from degradation from  
8 nitrates and other pollutants so as to preserve the Cummings Basin as a source of potable water  
9 for its inhabitants. The Watermaster intends to actively sample and monitor groundwater quality  
10 and pursue mitigation measures to prevent the spread of nitrates and other pollutants.  
11 Accordingly, any Party or Extractor shall allow the Watermaster to take samples from any wells  
12 in the Cummings Basin to monitor water quality and mitigate threatened contamination of  
13 groundwater in the Cummings Basin.

14           23.    Advisory Committee. Extractors are authorized to organize an Advisory  
15 Committee consisting of a representative of each of the District Conjunctive Use Customers plus  
16 six Extractors, two of which will be Extractors with the largest M&I allocations, two of which  
17 shall be Extractors having the largest Irrigation allocations, and two of which shall be Extractors  
18 having an Irrigation allocation chosen by simple vote of all Irrigation Extractors. The Advisory  
19 Committee shall act in an advisory capacity to the Watermaster only and shall have the duty to  
20 study, review and make recommendations on all discretionary determinations of the  
21 Watermaster. The Advisory Committee shall meet with the Watermaster at least once per year,  
22 and more often as determined by the Watermaster. Meetings of the Advisory Committee shall be  
23 open to all Overlying Owners, all Extractors, and all members of the public.

24           24.    Data, Estimates and Procedures. The Watermaster and the Watermaster's  
25 Hydrogeological Consultant shall rely on and use the best available science, records and data,  
26 including preliminary data, to support the implementation of this Amended Judgment. Where  
27 actual records of data are not available, the Watermaster and the Watermaster's Hydrogeological  
28 Consultant shall rely on and use sound scientific and engineering estimates.

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25. Fees and Assessments. Each Party is ordered to pay the fees and assessments authorized under this Amended Judgment, including Over-Extraction Fees under Paragraph 13 above and Annual Administrative Assessments under Paragraph 16 above. Additionally, the Watermaster shall promulgate rules and may establish fees for recovering the direct cost of the Watermaster reviewing applications and other activities solely attributable to a single or small number of Extractors from such Extractors.

26. Continuing Jurisdiction. The Court retains and reserves full jurisdiction, power and authority for the purpose of enabling the Court, upon duly noticed and served motion of any Party or Parties, to make such further or supplemental orders or directions as may be necessary or appropriate to interpret, enforce, administer or carry out this Amended Judgment and to provide for such other matters as are not contemplated in this Amended Judgment and which might occur in the future, and which, if not provided for, would defeat the purpose of this Amended Judgment.

DATED:

\_\_\_\_\_  
Judge of the Superior Court

