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**Exempt from filing fee
per Govt. Code, § 6103**

11 Attorney for Tehachapi-Cummings County Water District

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF KERN

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

17 Plaintiff,

18 vs.

19 FRANK ARMSTRONG, et al.,

20 Defendants.

Case No.: 97209

**STIPULATION FOR ENTRY OF
AMENDED AND RESTATED
JUDGMENT AND PHYSICAL
SOLUTION AND [PROPOSED] ORDER
JOINING STIPULATING PARTIES AS
DEFENDANTS**

Date Action Filed:
Judgment Entered:

21 **Introduction**

22 1. The parties to this Stipulation and Order for Entry of Amended and Restated
23 Judgment and Physical Solution (“Stipulation”) are plaintiff Tehachapi-Cummings County
24 Water District (“TCCWD”) and the stipulating Overlying Owners, District Conjunctive Use
25 Customers, and other Extractors that are signatories hereto (“Stipulating Extractors”) (together
26 with TCCWD, the “Stipulating Parties”). The proposed Amended and Restated Judgment and
27 Physical Solution is attached hereto as **Exhibit 1** and incorporated herein by reference
28 (“Amended Judgment”). Defined terms in the Amended Judgment shall have the same meaning
in this Stipulation.

2. In 1966, TCCWD filed this action, alleging that the Cummings Basin had been in
a state of Overdraft since 1949 and asking the Court, among other things, to adjudicate the

1 groundwater rights of the parties and to enjoin them from Extracting more than the Natural Safe
2 Yield of the Basin. The Court entered Judgment on March 6, 1972 (“Judgment”). The Judgment,
3 which was reversed in part by the Fifth District Court of Appeal in 1975, determined that the safe
4 yield of the Cummings Basin was 4,090 AFY, appointed TCCWD as Watermaster and reserved
5 continuing jurisdiction for all purposes.

6 3. Each of the Stipulating Extractors (i) is currently Extracting, (ii) intends and
7 threatens to Extract, or (iii) is an Overlying Owner on whose land groundwater is currently being
8 Extracted from the Cummings Basin.

9 4. For the reasons stated in the proposed Amended Judgment, the Stipulating Parties
10 hereby seek to amend the terms of the Judgment. The Amended Judgment, in order to provide
11 for sustainable management of the Cummings Basin, among other things:

- 12 a. Adjusts the Natural Safe Yield to 2,990 AFY as determined by the 2015
13 Cummings Basin Groundwater Model;
- 14 b. Provides for the periodic redetermination of the Natural Safe Yield;
- 15 c. Sets forth an equitable process for the Watermaster to allocate annually the
16 Natural Safe Yield among the Overlying Owners;
- 17 d. Provides for metering of all wells Extracting groundwater from the Cummings
18 Basin by 2021, except for existing single-family residential wells Extracting
19 less than 2 AFY which must be metered by 2025;
- 20 e. Requires monthly and annual reporting of Extractions and groundwater use;
- 21 f. Provides the Watermaster with certain duties and powers to manage the
22 Cummings Basin and for an Administrative Assessment for the Watermaster’s
23 costs of carrying out its duties under the Amended Judgment; and
- 24 g. Sets forth a process for appealing Watermaster decisions.

25 5. Each Stipulating Party has agreed to this Stipulation without admitting any factual
26 or legal provisions of this Stipulation or the Amended Judgment.

Stipulation

1
2 6. Each of the Stipulating Parties that has not previously appeared in this action
3 hereby represents that it is an Extractor and appears in the action as a defendant and submits to
4 the Court’s jurisdiction.

5 7. Except for Paragraph 6 above, this Stipulation is expressly conditioned, as set
6 forth in Paragraph 10 below, upon the approval and entry of the Amended Judgment by the
7 Court.

8 8. The following facts, considerations, and objectives, among others, provide the
9 basis for this Stipulation:

- 10 a. The Stipulating Parties represent all or a substantial part of the total Extraction
11 within the Cummings Basin.
- 12 b. For several years total Extractions from the Cummings Basin have exceeded
13 the Natural Safe Yield of 2,990 AFY.
- 14 c. Protection of the rights of the Stipulating Parties and protection of the public
15 interest within the Cummings Basin require the development and imposition
16 of a Physical Solution.
- 17 d. The Amended Judgment is consistent with and in furtherance of the mandate
18 of Article X, Section 2, of the State Constitution and the water policy of the
19 State of California.
- 20 e. The Amended Judgment is consistent with the water right priorities of all non-
21 stipulating parties and treats all objecting parties and all other non-stipulating
22 parties equitably.
- 23 f. Entry of the Amended Judgment will avoid the time, expense, and uncertainty
24 associated with litigation.
- 25 g. The Amended Judgment will aid in securing a reliable and cost-effective
26 water supply to serve the needs of the Stipulating Parties and other Extractors.

27 9. The provisions of the Amended Judgment are related, dependent, and not
28 severable. Each and every term of the Amended Judgment is material to the Stipulating Parties’

1 agreement. If the Court does not approve the Amended Judgment as presented, or if an appellate
2 court overturns or remands the Amended Judgment entered by the trial court, then this
3 Stipulation is *void ab initio* with the exception of Paragraphs 6 and 7, which shall survive.

4 10. The Stipulating Parties will cooperate in good faith and take any and all necessary
5 and appropriate actions to support the Amended Judgment until such time as this Amended
6 Judgment is entered by the Court, and appeals, if any, are final, including:

- 7 a. Producing evidentiary testimony and documentation in support thereof;
- 8 b. Defending the Amended Judgment against non-stipulating parties,
9 including, as appropriate, providing evidence of the Stipulating Parties' Overlying Use.

10 **Court Approval**

11 11. The Stipulating Parties agree that an orderly procedure for obtaining the Court's
12 approval of the Amended Judgment is a material term to this Stipulation. The Parties agree that a
13 noticed motion to be filed by TCCWD is an appropriate process for obtaining such approval.

14 **Other Terms**

15 12. The Stipulating Parties agree that this Stipulation shall bind and benefit them and
16 will be binding upon and benefit all their respective heirs, successors-in-interest, and assigns.

17 13. Upon entry of the Amended Judgment, a copy of the Amended Judgment shall be
18 recorded in the official records of the County of Kern.

19 14. Each signatory to this Stipulation represents and affirms that he or she is legally
20 authorized to bind the Stipulating Party on behalf of whom he or she is signing.

21 15. This Stipulation may be executed in counterparts and by means of portable
22 document format (.pdf), which taken together shall be deemed to constitute one document.

23
24 Dated: _____, 2019

TEHACHAPI-CUMMINGS COUNTY WATER
DISTRICT

25
26 By: _____
James Pack, Its President

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28 By: _____
Catherine Adams, Its Secretary

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APPROVED AS TO FORM:

Dated: _____, 2019

KUHS & PARKER

By: _____

Bernard C. Barmann, Jr., counsel for
Tehachapi-Cummings County Water District

[Additional party signatures are on the attached pages following the form of Order.]

ORDER

Based upon the stipulation of the parties and good cause appearing therefore, the Court orders as follows:

1. All Stipulating Parties that have not previously appeared in the action are hereby joined in the action as defendants.

Dated: _____, 2019

Judge of the Superior Court

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SIGNATURE PAGE TO
STIPULATION FOR ENTRY OF AMENDED AND RESTATED JUDGMENT AND PHYSICAL
SOLUTION AND [PROPOSED] ORDER JOINING STIPULATING PARTIES AS DEFENDANTS

1. This signature page is intended to be attached to the Stipulation for Entry of Amended and Restated Judgment and Physical Solution and [Proposed] Order Joining Stipulating Parties as Defendants entered into by and between Tehachapi-Cummings County Water District and various stipulating Overlying Owners, District Conjunctive Use Customers, and other Extractors in the matter of *Tehachapi-Cummings County Water District v. Frank Armstrong, et al.*, Kern County Superior Court case number 97209.

2. The undersigned has read the Stipulation referenced above and, by signing below, agrees to its terms.

For Individuals

Dated: _____, 2019

Signature: _____

Name: _____

For Entities

Dated: _____, 2019

Entity Name: _____

Signature: _____

Name: _____

Title: _____