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13 CENTRAL AND WEST BASIN WATER
14 REPLENISHMENT DISTRICT, etc.,
15 Plaintiff,
16 vs.
17 CHARLES E. ADAMS, et al.,
18 Defendant

Case No.: 786,656
NOTICE OF MOTION AND MOTION TO
AMEND AND RESTATE JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF

[Filed Concurrent With [Proposed] Order
Re: Amendment To The Central Basin
Second Amended Judgment]

Date: ~~TBD~~ 4/27/09
Time: ~~TBD~~ 8:30 am
Dept: ~~TBD~~ 42

19 CITY OF LAKEWOOD, a municipal
20 corporation,
21 Cross-Complainant
22 vs.
23 CHARLES E. ADAMS, et al.,
24 Cross-Defendants.

Trial Date: N/A
Discovery Cut-off: N/A
Motion Cut-off: N/A

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1 TO ALL PARTIES to the Central Basin Judgment set forth on Exhibit A and
2 incorporated herein and to each of their attorneys of record:

3 PLEASE TAKE NOTICE that on a date and time to be determined by the Court, which
4 will be the subject of a subsequent Notice, in a department of the above-entitled court to be
5 assigned, located at 111 N. Hill Street, Los Angeles, California 90012, the Moving Parties
6 hereinafter identified will move the Court for an Order Amending and Restating the Judgment
7 herein. The Motion will be made on the grounds that amendment to the Judgment is required in
8 order to fully utilize the groundwater resources of the Central Groundwater Basin, and the other
9 grounds as stated in the attached Memorandum of Points and Authorities.

10 The Motion will be based on this Notice of Motion, on the attached Memorandum of
11 Points and Authorities, on the attached Declarations of Rob Beste, James Glancy, Theodore
12 Johnson, James McDaniel, Lester Snow, David Sunding, Ph.D., James Waldo, Kevin Wattier
13 and Robb Whitaker and on all the papers, pleadings, and records on file in this action.

14 Dated: March 30, 2009

Lagerlof, Senecal, Gosney & Kruse, LLP

15
16 By: 

17 William F. Kruse
18 Attorneys for Defendant,
19 City of Lakewood

20 Brownstein Hyatt Arber Schreck, LLP

21 By: _____

22 Stephanie Osler Hastings
23 Attorneys for Defendant,
24 Golden State Water Company

25 Alston & Bird

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27 Edward J. Casey
28 Attorneys for Plaintiff,
Water Replenishment District of
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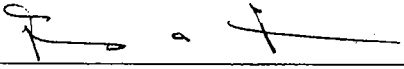
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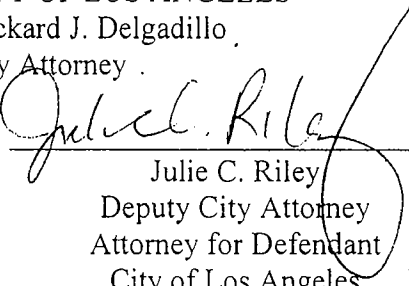
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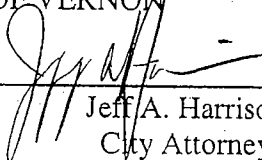
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF MOTION TO AMEND AND RESTATE JUDGMENT**

3
4 **INTRODUCTION**

5
6 On February 27, 2009 California's Governor proclaimed a statewide drought emergency,
7 the second such declaration within a year. Following years of drought, croplands have gone
8 unplanted, imported supplies have been reduced to a small fraction of historical amounts, and
9 supply adjustments in Northern California, made necessary by court-ordered environmental
10 mitigation, have heightened concern that Southern California risks severe water shortages if it
11 continues to rely heavily on imported supplies. The decreasing reliability of imported water,
12 coupled with the rapidly increasing cost of that supply, requires Southern California to become
13 more self sufficient by maximizing its use of local resources.¹

14 This region has an unused resource perfectly suited to aid in that effort. A vast area of
15 "dewatered space" exists underground in the Central Basin and West Coast Basins ("Basins")
16 that can be used to store water immediately, easily, cheaply and naturally. Nearly four million
17 people depend upon groundwater drawn from the Basins. Historically, these Basins have
18 provided natural reservoirs for the collection and storage of water for later use in times of
19 shortage. More recently, they have been underutilized because of the availability of relatively
20 cheap and plentiful imported supplies. Changed circumstances, however, now dictate the need
21 for maximum beneficial use of this untapped resource.

22 For decades, this court has imposed a workable "physical solution" on the Basins through
23 Judgments entered more than forty years ago in response to falling water levels and increased
24 competition for limited supplies. The respective Judgments adjudicated users' rights to extract
25 groundwater and established a management regime for each basin to guard against permanent
26 damage to the resource. The result has been a dramatic increase in the water table and stable

27
28 ¹ Details concerning the State's water supply and the importance of encouraging greater
conjunctive use of our groundwater resources are provided in the accompanying Declaration of
Mark Cowin, the Deputy Director of California's Department of Water Resources.

1 groundwater pumping rights.

2 But the Judgments did not establish a program for the use of the Basins' dewatered
3 spaces. The Judgments acknowledged the potential future importance of the dewatered storage
4 space, but deferred establishing provisions for its use, instead reserving jurisdiction to address
5 the matter at a later date. As a result, uncertainties in the rights and responsibilities of those who
6 have proposed to utilize the Basin's dewatered space by storing water underground have limited
7 their ability to do so. Because of the risk of conflict over which parties are entitled to store, how
8 much, when, and in what manner, the parties have been reluctant to invest in storage, and no one
9 has made any significant use of this resource.²

10 Despite the availability of this resource to the region, the "story of storage" in these
11 Basins is a story of persistent conflict. It includes an unsuccessful motion to amend the Central
12 Basin Judgment with respect to storage in 2001, followed by an instructive appellate court ruling.
13 It includes an effort by a groundwater agency to impose its own rules for storage, a process that
14 did not lead to any significant increase in the storage of water. It includes an unsuccessful initial
15 mediation, a process that led to many agreements but ultimately ended in failure.

16 But it also includes a second mediated process that has led to widespread consensus on a
17 structure to resolve the conflict. Under the direction of the California Department of Water
18 Resources (DWR), which is this court's appointed "Watermaster," and through substantial
19 compromise among the parties, a framework for use and local management of the Basins'
20 dewatered storage space was developed and translated into proposed amendments to the
21 Judgments in both Basins. These proposed amendments are supported by the parties holding
22 well over fifty percent of the water rights in both Basins (See Stipulation attached hereto as
23 Exhibit B), as well as the Watermaster, and the Water Replenishment District of Southern
24 California (WRD), the local agency responsible for securing imported supplies for groundwater
25 replenishment.

26 This motion seeks to amend Central Basin's Second Amended Judgment, dated May 6,

27
28 ² These limitations under the Judgment concerning groundwater storage are discussed in
further detail in the accompanying Declarations of Kevin Wattier, James Glancy, Rob Beste and
James McDaniel.

1 1991 (“Central Basin Judgment” or “Judgment”) by providing for the use of available
2 underground storage, vastly increasing the region’s ability to capture water when it is abundant,
3 so it can be recaptured and used in times of need. The motion seeks to incorporate the consensus
4 storage framework into the respective groundwater adjudications. The moving parties are cities
5 and other water providers, all of whom have rights in and to the Central Basin, who serve water
6 to the more than two million people living and working in the region, together with WRD.

7 If granted, the amendments to the Judgment proposed by this motion (“Amendments”)
8 will provide the region with essential opportunities to satisfy water demands in the face of acute
9 and worsening water supply challenges. The Amendments provide the legal certainty needed to
10 encourage Basin users to optimize their use of the Basin, including the use of available storage
11 capacity within the Basins, water augmentation projects and increased use of recycled water. By
12 making the water supply more reliable and by opening access to lower-cost supplies, these
13 improvements to the Judgment will provide significant benefits to the people who depend upon
14 the Basin. The Basin’s water users and the region as a whole will be more self-sufficient now
15 and into the future. The economic value of these benefits to the region is over \$500,000,000.³

16 Concurrently, a nearly identical motion is being made to amend the West Coast Basin
17 Judgment.

18 This Memorandum discusses five general areas:

- 19 1. The background of the case, including an overview of the Central Basin and its
20 Judgment;
- 21 2. The common law principles applicable to groundwater storage programs, and
22 how the proposed Amendments build upon these common law tenets to
23 facilitate maximum beneficial use of the Basin’s storage resource.
- 24 3. The Court’s reserved jurisdiction, which extends to the Basin’s dewatered
25 storage space (a key finding made by the Court of Appeals in its opinion
26 concerning the earlier Central Basin storage motion);

27
28 ³ These economic benefits of implementation of the Amendments are described in detail
in the report of David Sunding, Ph.D., which is attached to the accompanying Declaration of Dr.
Sunding.

1 **B. The Central Basin Judgment and the Formation of WRD**

2 Until the 1960's, the Central Basin was the area's primary source of domestic and
3 agricultural water supply. As Southern California was developed, like many Southern California
4 groundwater basins, the Central Basin experienced an extended period of overdraft in which
5 extractions exceeded natural replenishment. As groundwater tables dropped, the consequences
6 for the region included seawater intrusion, increased pumping costs, and the risk of loss of the
7 Basin for drinking water storage.

8 In 1945 a group of groundwater producers filed a lawsuit seeking the adjudication of
9 groundwater rights in the adjacent West Coast Basin.⁵ The court entered the West Coast Basin
10 judgment in 1961, which appointed DWR as "Watermaster," and declared limitations on the
11 parties' pumping rights within that basin.

12 An adjudication of the Central Basin followed with the court's entry of its order in this
13 case in 1965. The Central Basin Judgment also appoints DWR as Watermaster, and declares
14 both a "Total Water Right" and an "Allowed Pumping Allocation" ("APA") for each party
15 entitled to produce water from the Basin – the Basin's water right holders. Each party may either
16 produce its full APA or may carry over as much as 20% of its APA to be produced in the next
17 year (the "Carryover Right").

18 The amount of groundwater production allowed by the court cannot be fully produced
19 without augmentation through imported supplies. In 1959, following a campaign supported by
20 the groundwater producers, the voters of the region approved the creation of a groundwater
21 replenishment agency, now known as the Water Replenishment District of Southern California
22 ("WRD"). WRD is the original plaintiff in this case. Its role is to replenish the groundwater that
23 is pumped through the exercise of adjudicated groundwater rights in the Central Basin and the
24 West Coast Basin. WRD purchases imported and recycled water and causes that water to enter
25 the Basins through "spreading grounds" in the Central Basin and by injection into seawater
26 intrusion barriers along the coast in the West Coast Basin.

27
28 ⁵ The common law principles governing groundwater rights and a court's broad authority
in groundwater adjudication cases are reviewed in Parts II(A) and IV(A) of this brief.

1 In addition to those sources of replenishment water, WRD manages programs that
2 maximize the capture of native water for replenishing the Basins. WRD also has statutory
3 authority to monitor groundwater quality, to clean up contamination, and to maintain the
4 underground water barriers along the coast. WRD is supported by a “Replenishment
5 Assessment” imposed on each acre-foot of groundwater that is pumped in either the Central
6 Basin or the West Coast Basin. By law, that assessment must be uniform across both basins
7 (Wat. Code § 60317).⁶

8 The Central Basin Judgment imposed a “physical solution” intended to end
9 overproduction of groundwater and to encourage replenishment of supplies. In the more than 40
10 years since the adjudication of the two basins, and the creation of WRD, groundwater levels have
11 recovered dramatically (See Declaration of Robb Whitaker). The region has been benefited by
12 the legal and institutional certainty brought about by this structure.

13 Now, the moving parties ask the court to extend that physical solution in a manner that
14 encourages beneficial use of the Basin’s dewatered space as well. Such use is critically needed
15 to adapt to changed circumstances of reduced water supply and rapidly accelerating water costs.

16
17 **C. Prior Efforts to Amend the Judgment Regarding Storage**

18 In 2001, Central Basin water rights holders unsuccessfully sought to amend and restate
19 the Judgment, with respect to the storage issue. They requested a declaration by the court that
20 rights to store water were attendant rights to the adjudicated water extraction rights owned by the
21 water rights holders. WRD opposed the motion, in part on the grounds that the dewatered space
22 was a public resource that should be managed for public benefit. This Court denied the motion,
23 and the matter was appealed.

24 In affirming the trial Court’s ruling in 2003, the Appellate Court was instructive
25 regarding the use and management of storage within the Basin. After concluding that the court’s
26 broad reservation of jurisdiction extended to determinations regarding underground storage, the
27

28 ⁶ Further details concerning WRD’s operations are provided in the accompanying
Declarations of Robb Whitaker and Theodore Johnson.

1 court held that “extraction and storage are different physical processes; establishing a hydrologic
2 link between them is not sufficient to show that a legal interest in one creates an interest in the
3 other.” *Central and West Basin Water Replenishment District, etc. v. Southern California Water*
4 *Company, et al.* 109 Cal.App.4th 891, 910.

5 The court also held that no party had exclusive rights to control or administer the use of
6 the dewatered storage space. *Id.*, at 916-917. The court was explicit, however, in defining the
7 narrow limits of its holding to apply only to the storage space allocation proposed by the motion
8 before it. “[W]e do not hold ... that the Pumpers are precluded from using the Central Basin
9 storage space.” *Id.* at 917.

10 The effect of the trial court’s ruling and appellate opinion was to send the parties back to
11 the drawing board to develop a storage program that was consistent with the California
12 Constitution’s mandate that all water resources be put to beneficial use to the fullest extent to
13 which they are capable and for the greatest public benefit. (See *Id.* at 905).⁷ Doing so would
14 require the cooperation and agreement of many of the Basin’s different interests, together with
15 WRD and the State of California.

16 A compromise solution was developed that will encourage greater beneficial use of the
17 resource — by providing clarity and legal certainty with respect to the use of the storage space,
18 without harm to any user or use of the Basin. That solution is embodied in this motion. In
19 contrast to the prior effort, this motion is supported by WRD.

20
21 **D. The Mediated Process**

22 Following the trial court’s decision in the prior storage litigation, the stakeholders agreed
23 to participate in a mediated process aimed at developing a comprehensive approach to
24 groundwater storage in the Central and West Coast Basins. That process lasted almost three
25

26 ⁷ Article X, Section 2 of the California Constitution provides: “It is hereby declared that
27 because of the conditions prevailing in this State the general welfare requires that the water
28 resources of the State be put to beneficial use to the fullest extent of which they are capable, and
that the waste of unreasonable use or unreasonable method of use of water be prevented, and that
the conservation of such waters is to be exercised with a view to the reasonable and beneficial
use thereof in the interest of the people and for the public welfare”

1 years before the parties broke off discussion in early 2005 without reaching the desired global
2 solution. (Additional details concerning this first facilitated process are provided in the
3 accompanying Declaration of James Glancy).

4 However, following the parties' failure to reach a final agreement in the prior mediation,
5 the Director of Water Resources encouraged stakeholders in the two Basins to begin to meet
6 again given the importance of groundwater storage to California's water supply. The Director
7 proposed a new facilitator, James Waldo, who had helped other water interests across the
8 western United States reach critical agreements (see accompanying Declarations of Mark Cowin
9 and James Waldo). Mr. Waldo was retained by the parties to assist in fashioning a solution.

10 Beginning in the summer of 2006, Mr. Waldo met with many of the parties and assessed
11 the prospects for success. In September, 2007 Mr. Waldo wrote to the stakeholders, citing "a
12 real opportunity for a solution to groundwater storage." (See Declaration of James Waldo).

13 Over the course of more than a year, Mr. Waldo and his team worked with those
14 interested in the Basins to craft a Proposed Framework for Groundwater Storage, which was
15 presented to parties in January, 2008. There followed a series of workshops during which
16 written and oral comments were received, and the Framework was refined. Finally, the
17 mediators assembled a drafting team of parties, attorneys, engineers and water managers, to
18 prepare and refine the text of the revised Judgments themselves.

19 Thus, under the active encouragement of DWR, the parties have met and conferred many
20 times in an effort to design a comprehensive groundwater storage program that could be
21 managed through the court by way of amendments to the two basin adjudications. That effort
22 has received the support of the Central Basin Water Association, the West Basin Water
23 Association, WRD, DWR, many local cities, and numerous other public and private water
24 producers. (See Declarations of James Glancy, Kevin Wattier and Rob Beste). As a result of
25 that mediation, proposed judgment amendments are being presented to the court simultaneously
26 in the Central Basin and the West Coast Basin cases.

27 With the declaration by the Governor of a statewide drought emergency, a rational
28 underground water storage program becomes critical. By this motion and its companion in the

1 West Coast Basin, parties holding a majority of the water rights in both the Central Basin and the
2 West Coast Basin, together with WRD, now propose an amendment of the Judgments in each of
3 the Basins to establish a comprehensive groundwater storage program to be administered by the
4 court-appointed Watermaster (the "Third Amended Judgment" or "Amended Judgment").

5
6 **E. The Parties to this Motion**

7 This motion is brought by water right holders -- i.e., parties with adjudicated APA -- who
8 produce groundwater from the Basin (the "moving parties"). The moving parties include several
9 types of entities serving water directly to customers overlying the Basin. The moving parties
10 include the Cities of Lakewood, Long Beach and Los Angeles, Huntington Park and Vernon, as
11 well as Golden State Water Company and California Water Service Company. Together, the
12 moving parties serve water to millions of customers within the Central Basin. Although not a
13 water right holder, WRD is also a moving party.

14 The moving parties, together with many other Basin water right holders, have executed a
15 stipulation agreeing to the proposed Amendment and expressing their support for this motion.
16 The executed stipulation is filed concurrently with this motion.

17 The stipulating parties, which include all of the moving parties, when considered
18 together, represent over 50% of the water rights in the Central Basin.

19
20 **F. Summary of the Proposed Amendments**

21 The proposed Amendments have been lodged concurrently with these moving papers,
22 along with a proposed Order. For convenience of the court, a "redline" version is attached as
23 Exhibit "A" that shows the proposed changes compared to the language of the existing
24 Judgment. Originally adopted in 1965, the Judgment has been amended by this Court on two
25 prior occasions, and those prior amendments remain in the language of the proposed new
26 amendment.

27 To implement a comprehensive water storage program, the Parties have sought to
28 develop a balanced and prudent program for the Basin that seeks to:

- 1 ▶ Prevent harm to the parties' existing groundwater rights granted under the Judgment.
- 2 ▶ Preserve WRD's ability to discharge its statutory duty to replenish the Basin.
- 3 ▶ Recognize that different sources of water can be stored in the Basin, and provide for
- 4 flexibility in the means for storing water from those sources.
- 5 ▶ Establish greater legal and institutional certainty for the parties' investment decisions
- 6 to store (and later recapture) water in the Basin.
- 7 ▶ Create a governance structure that is consistent with these objections and is grounded
- 8 in the principles of local control, stakeholder participation and transparency.

9 To achieve these primary objectives, the proposed Amendments provide for the
10 following:

11 1. **Declaring the Amount of Space to be Used.**⁸ Out of the total dewatered
12 space, the Amendments declare an amount of "Available Dewatered Space" for active
13 conjunctive use to be 330,000 acre-ft in the Central Basin, and provide that a party may
14 store water up to 200% of the party's APA, if space is available. The Amendments divide
15 the Available Dewatered Space into two functional categories: 205,000 acre-feet is made
16 available for various forms of storage projects by water users, defined as the "Available
17 Storage Capacity," and 125,000 acre-feet is reserved for WRD's basin replenishment
18 function, defined as the "Basin Operating Reserve." However, the Amendments also
19 allow the Basin Operating Reserve to be used for individual storage projects on a
20 temporary basis when that space is not needed by WRD to hold replenishment water.
21 The Amendments do not purport to regulate all dewatered space within the Basin, but do
22 authorize the use of sufficient space to operate a meaningful conjunctive use program in
23 the Basin.

24 2. **Establishing Flexible Areas for Categories of Storage.** The
25

26 ⁸ The determination of the amount of Available Dewatered Space and the amounts
27 attributed to the various categories were the subject of much analysis. This review included
28 extensive computer modeling and an administrative determination of "optimal" groundwater
levels for replenishment in order to prevent any harm due to rising groundwater levels (see
Declaration of Theodore Johnson).

1 Amendments further divide Available Storage Capacity into three categories of storage as
2 follows:

3 a) Individual Storage Accounts. The Amendments provide that each
4 party, without the need for any prior review or approval, may store an amount of
5 water in an "Individual Storage Account" equal to up to 40% of that party's
6 Allowed Pumping Allocation, by either converting unused carryover⁹ water to
7 storage or by importing water into the Basin through use of the spreading grounds
8 or injection wells.

9 b) Community Storage Pool. The Amendments allow any party to
10 store water in a "Community Storage Pool," so long as the total amount stored by
11 all parties in Central Basin Community Storage does not exceed 95,000 acre-feet.
12 In this area, the Amendments would provide a priority right to occupy
13 Community Storage to those rights holders in the Central Basin having 3,000
14 acre-ft or fewer in pumping rights. There are certain restrictions concerning
15 storage in Community Storage intended to require parties to vacate storage space
16 periodically and refill it rather than just leaving the water in storage, thereby
17 promoting a desirable "cycling" of water within the storage space.

18 c) Regional Storage Projects. The Amendments also establish a
19 category of "Regional Storage" totaling 23,000 acre-ft, where special projects
20 approved by the court-appointed Watermaster could proceed to store water for the
21 benefit of the region as a whole. Those projects can be developed by existing
22 groundwater right holders or others.

23 **3. Allowing "Carryover Conversion."** The Amendments allow a party to
24 store water either by directly importing it or by electing to convert any unused one-year
25 carryover water to stored water. Where carryover water is converted to storage, the
26 producer also pays the Replenishment Assessment for that stored water in order to ensure

27
28 ⁹ "Carryover" water is groundwater that is authorized for production according to the
Judgment, but is not produced, and instead is held for production in the next year. Rights to
carryover are authorized under Section III(A) of the current Central Basin Judgment.

1 that replacement water is purchased to offset the later extraction of this stored water.

2 4. **Adjusting Carryover Rights.** The Amendments redefine the amount of
3 allowed carryover water to be equal to 100% of the party's Allowed Pumping Allocation,
4 minus the amount of water that party has in storage. Effective implementation of this
5 provision is facilitated by the fact that increased carryover is "ramped up" over the first
6 few years after the Amendments become final -- such that 30% carryover is allowed in
7 the year the Amendment becomes final and for the first two years thereafter, then 60%
8 the next year.

9 5. **Establishing a Basin Operating Reserve.** The Amendments set aside
10 125,000 acre-ft of the Available Dewatered Space as a "Basin Operating Reserve," within
11 which WRD may operate its replenishment program. This will allow WRD to obtain
12 larger quantities of water when available for future replenishment needs, but restricts its
13 ability to occupy space intended for the pumper's storage programs.

14 6. **Appointing a New "Participative" Watermaster.** The Amendments
15 appoint a new Watermaster, consisting of three bodies that perform different functions:

16 a. A "Water Rights Panel" is created, consisting of five
17 representatives of parties having water rights in the Central Basin. At least one
18 seat is set aside for producers holding 3,000 acre-ft or fewer in pumping rights.
19 The Water Rights Panel is the arm of Watermaster empowered to enforce the
20 pumping aspects of the Judgment. The Chair of the Water Rights Panel
21 represents the Watermaster before the Court.

22 b. A "Storage Panel" is created, as a "bicameral" body made up of the
23 Water Rights Panel and the WRD board. The Storage Panel is the arm of
24 Watermaster empowered to review proposals for Regional Storage and to enforce
25 aspects of the Judgment related to the storage program.

26 c. An "Administrative Body" is created, consisting of WRD. The
27 Administrative Body is empowered to maintain records associated with the
28 administration of the Judgment, and administers the review process for certain

1 storage projects.

2 7. **Establishing Limits on Extraction.** The Amendments provide that a
3 party may not extract more than 120% of its Allowed Pumping Allocation in a single
4 year without first having the proposal reviewed by the Watermaster. In certain areas of
5 the Central Basin, that review is conducted by the Water Rights Panel. In other areas of
6 the Basin, that review is conducted by the Storage Panel.

7 8. **Allowing a "Call" on Carryover Water Converted to Storage.** The
8 Amendments provide that a party who has no access to leased water below a defined
9 price may extract carryover water which has been converted to storage in that year by
10 paying the amount required to import water to replace it, but not an additional
11 Replenishment Assessment (which was already paid upon conversion by the storing
12 party). This assures that water that would otherwise be available to lease, but which was
13 converted to storage, will still be available to produce, if required to meet basic needs.

14 9. **Providing for Future Water Supply Augmentation.** The Amendments
15 provide that extraction rights of the parties could be permanently increased if parties
16 cooperatively develop a program that permanently adds additional water to the Basin.
17 Only those parties participating in such a program would have to pay any costs associated
18 with it, and the implementation of the program cannot result in any increase in the
19 Replenishment Assessment. The Amendments provide that Water Rights Augmentation
20 Projects must be reviewed and approved by the Storage Panel.

21 10. **Allowing Transferability of Stored Water.** The Amendments provide
22 that water held in storage, like water rights themselves, may be freely transferred between
23 parties to the Judgment. The Amendments allow stored water to be transferred to the
24 Central Basin from the West Coast Basin, subject to certain limitations, including the fact
25 that such a transfer may not cause "Material Physical Harm" to anyone. The
26 Amendments further provide that, for larger transfers, the pumpers in either Basin can
27 override such a transfer by "majority protest."

28 11. **Providing for Agreed Contingencies.** The storage program established

1 by the Amendments is only assured so long as a uniform Replenishment Assessment is
2 maintained across the two Basins (the importance of a uniform Replenishment
3 Assessment is discussed in Part VI). If a uniform Replenishment Assessment is not
4 maintained, the Amendments provide for the Court to hold hearings to address
5 appropriate remedies.

6 **12. Providing for Periodic Review.** The Amendments require that the
7 parties meet periodically to evaluate the success of the storage program and to report to
8 the Court. In any event, the entire program will be subject to complete reevaluation by
9 the court at the end of twenty years. Parties that stipulate to the storage program would
10 be prohibited from attempting to overturn the program during that period.

11 **13. Retaining Jurisdiction.** The Court continues to retain jurisdiction to
12 modify the Judgment as may be necessary to effectuate the purposes of the Judgment.

13
14 **ARGUMENT**

15
16 **PART II**

17
18 **THE PROPOSED AMENDMENTS BUILD UPON THE COMMON LAW TO**
19 **FACILITATE MAXIMUM BENEFICIAL USE OF THE BASIN'S STORAGE**
20

21 **A. Basic Tenets of California Law Concerning Native Groundwater**

22 California is one of the few states that does not impose a state-wide regulatory or
23 permitting system on the production of groundwater. Because there is no state-wide system
24 governing groundwater production, anyone may acquire a water right to produce groundwater
25 based on common law. Initially, those water rights were solely property-based. For instance, an
26 owner of land overlying a groundwater basin has an "overlying right" to extract groundwater for
27 use on the owner's property.

28 Over the years, however, the common law has provided opportunities to acquire water

1 rights that are not tied to land ownership. This common law is based on the notion that a water
2 right extends only to the “right to use the water.” *Imperial Irrigation District v. SWRCB* (1990)
3 225 Cal. App. 3d 548, 562. This right is commonly referred to as an “appropriative” right.
4 Appropriative rights to groundwater can be obtained, for example, by a public agency extracting
5 groundwater and delivering that water to its customers. *OCWD v. City of Riverside* (1959) 173
6 Cal. App. 2d 137, 165.

7 Appropriative rights are junior to overlying rights in that they can only be exercised to
8 the extent there is surplus water available. *Stevinson Water Dist. V. Roduner* (1950) 36 Cal. 2d
9 264, 269-70; *City of Pasadena v. City of Alhambra* (1949) 33 Cal. 2d 908, 924; Cal. Const., Art.
10 X, § 2. No surplus exists if the groundwater supply is overdrafted. Generally speaking,
11 overdraft occurs when the amount of water that is withdrawn by pumping is greater than the
12 amount of groundwater that recharges the groundwater basin over a period of years.

13 All water rights — whether overlying or appropriative — are subject to the doctrine of
14 reasonable and beneficial use and must be exercised in a manner “consistent with the interest of
15 the people.” Cal. Const. Art. X, § 2. The California Constitution further provides that waste of
16 water must be prevented and that the conservation of water must be exercised with a view to the
17 “reasonable and beneficial use thereof in the interest of the people and for the public welfare.”
18 (*Id.*) The constitutional mandate was established to “ensure that the state’s water resources
19 would be available for the constantly increasing needs of all its people.” *Central and West Basin*
20 *Water Replenishment District v. Southern California Water Company, et al.* 109 Cal. App. 4th at
21 904 citing *Meridian, Ltd. v. City and County of San Francisco* (1939) 13 Cal. 2d 424, 449.

22
23 **B. The Common Law Recognizes the Right to Augment the Groundwater Supply**
24 **Within a Basin and Recover the Stored Water from the Commingled Supply**

25 In addition to the rights to produce groundwater, common law also affords the right to
26 use available underground storage space to store imported water for later recapture. *City of Los*
27 *Angeles v. City of Glendale* (1943) 23 Cal.2d 68; *City of Los Angeles v. City of San Fernando*
28 (1975) 14 Cal.3d 199. The *Glendale* case was the first Supreme Court decision to address the

1 right to store “foreign” or imported water in a groundwater basin for later recapture. In that case,
2 the City of Los Angeles brought an action to quiet title to its right to the native groundwater in
3 the San Fernando groundwater basin. The City also sought a declaration of its exclusive right to
4 recapture foreign water that the City appropriated from the Owens Valley and transported to the
5 San Fernando basin. Upon reaching the San Fernando basin, the imported water was allowed to
6 percolate into the basin, where it commingled with the native water and was later recaptured for
7 the City’s needs.

8 Citing *Stevens v. Oakdale Irrigation District* (1939) 13 Cal.2d 343, a surface water case
9 that determined the prior rights of an importer to recapture water brought from another
10 watershed, the Supreme Court held that the City “had a prior right to use of the water brought to
11 the San Fernando Valley.” *Glendale, supra*, at 76-77. The court further held that an importer’s
12 right to recapture its foreign water was not affected by the fact that it was commingled with
13 native groundwater. The court explained:

14 “Plaintiff had a prior right to the use of the water brought to the San Fernando
15 Valley. It did not abandon that right when it spread the water for the purpose of
16 economical transportation and storage... By availing itself of the natural
17 reservoirs, it spared its citizens the cost of financing the construction of additional
18 dams, if, indeed appropriate sites were available at the lower end of the aqueduct.
19 Early in the history of the state, this court recognized the advantage of permitting
20 the use of natural surface facilities, stream beds, dry canyons and the like, for the
21 transportation of water. The rule of these cases was incorporated into section
22 1413 of the Civil Code.” (*Id.* at 76-77).¹⁰

23 The right to use subsurface storage space articulated in *Glendale* was later confirmed in
24 *City of Los Angeles v. City of San Fernando, supra*, 14 Cal.3d at 257, 263. In that case, Los
25 Angeles sought to confirm its pueblo rights to the native groundwater in the San Fernando basin

27 ¹⁰ Civil Code section 1413 was repealed and re-enacted as Water Code Section 7075.
28 Section 7075 provides: “Water which has been appropriated may be turned into the channel of
another stream, mingled with its water and then reclaimed; but in reclaiming it, the water already
appropriated by another shall not be diminished.” (Wat.Code. § 7075).

1 as against municipal appropriations. Again, the City sought a declaration of its right to recapture
2 water that it had imported to the San Fernando basin from the Owens Valley. The court upheld
3 its prior ruling in *Glendale*, stating:

4 “The purpose of giving the right to recapture returns from
5 delivered imported water priority over overlying rights and rights
6 based on appropriation of the native ground supply is to credit the
7 importer with the fruits of his expenditures and endeavors in
8 bringing into the basin water that would not otherwise be there.”

9 *San Fernando, supra* 14 Cal.3d at 261.

10 Thus, it is well settled that an entity that stores water in a groundwater basin obtains a
11 right to recapture from the commingled supply a quantity of groundwater equivalent to the
12 amount stored. However, within the general rule that parties may store, commingle and
13 recapture the supplies they import or develop, there are myriad ancillary, but important, issues
14 that are not well settled. For example, it is not clear what entity has the paramount right to make
15 use of the groundwater storage space when there is competing interest to use limited available
16 space. The appellate opinion on the 2001 motion in this matter left this issue unresolved. See
17 *Central and West Basin Water Replenishment District, supra*, 109 Cal.App.4th at 916-917
18 [holding that neither WRD nor the adjudicated rights holders possesses an exclusive right to
19 make use of the basin’s storage space].

20 Likewise, common law does not provide sufficient guidance as to the right to make
21 repeated use of storage space once initially used, what limitations apply to the recapture of stored
22 water, how storage programs are to be implemented to avoid adverse impacts to native
23 groundwater rights or overlying land uses, what entity or entities should exercise governing
24 authority over the storage programs, and how conflicts are to be resolved. While the common
25 law may generally provide that no party may injure another, it provides no concrete framework
26 to evaluate the potential for injury in advance of new storage projects or prior to recovery of
27 water previously stored.

28 This uncertainty surrounding use of storage space is a principal reason why the Basins’

1 valuable resources have gone largely unused for decades. (See Declarations of James Glancy and
2 James McDaniel). Underground storage programs involve upfront investments for the
3 acquisition of water for storage, and often for new capital facilities such as injection wells,
4 recharge facilities and treatment facilities. Encouraging these investments requires more legal
5 certainty than is presently the case. *State of Arizona v. State of California* (1983) 460 U.S. 605,
6 620; *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339, 355-356. The
7 proposed Amendments address and resolve these issues to establish a comprehensive and
8 coordinated framework for groundwater storage. (See Declarations of Rob Beste, Kevin Wattier,
9 James McDaniel and James Glancy).

10
11 **PART III**
12

13 **THIS COURT HAS JURISDICTION TO AMEND THE CENTRAL BASIN JUDGMENT**
14 **AND SHOULD EXERCISE THAT JURISDICTION**
15

16 Part IV of the existing Central Basin Judgment (Section V in the proposed Amendments)
17 reserves to the court the continuing jurisdiction, upon the application of any interested party, or
18 upon the court's own motion, to take action to assure the Basin is properly administered. This
19 Court specifically reserved jurisdiction to amend the Judgment to ensure that the water resources
20 in the Basin are effectively utilized. (Judgment, Part IV, Section h; Amendments, Section IV(H)
21 [authorizing the court to "provide for such other matters as are not contemplated by the judgment
22 and which might occur in the future, and which if not provided for would defeat any or all of the
23 purposes of this judgment to assure a balanced Central Basin subject to the requirements of the
24 Central Basin Area for water required for its needs, growth and development"]). With specific
25 relevance to matters concerning the use and management of the Basin's storage resource, the
26 Judgment reserves jurisdiction in this Court to "determine permissible levels of extraction" to
27 achieve "a balanced basin *and an economic utilization of Central Basin for ground water*
28 *storage...*" (Central Basin Second Amended Judgment, Part IV Section a, emphasis added; see

1 also proposed Third Amended Judgment, Section IV(A)).

2 The court has exercised its reserved jurisdiction several times over the years to fill in
3 gaps in the Judgment and to improve Basin management. For example, and as reflected in the
4 court's file, the court amended the Judgment in 1991 to allow for the creation of new
5 groundwater rights, under the control of WRD, to allocate to imperiled parties during a
6 "Declared Water Emergency." (See Central Basin Second Amended Judgment at Section
7 III(A)(2) and Section III(B)(6)). The court also amended the Judgment to adjust the amount of
8 unpumped water rights that could be "carried over" to a subsequent year and to exempt the
9 extraction of contaminated groundwater (See Central Basin Second Amended Judgment at
10 Section III(B)(7)).

11 The Judgment's reservation of jurisdiction is a component of the physical solution for
12 management of the Basin's water resources, discussed in more detail in Part IV below.
13 Reservation of jurisdiction of this nature is commonplace in judgments entered to adjudicate
14 groundwater rights in the context of a physical solution. *Central and West Basin Water*
15 *Replenishment District v. Southern California Water Co.* (2003) 109 Cal.App.4th 891, 903
16 ["Courts regularly affirm the expansive retention of jurisdiction in cases involving water rights"]
17 citing *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 937; *City of L. A. v. City of*
18 *Glendale* (1943) 23 Cal.2d 68, 81. The reserved jurisdiction facilitates this Court's management
19 of the Basin in perpetuity, allowing it to adjust the operation and use of the resource for optimal
20 benefit, including changes necessary to adopt new water management strategies such as those
21 proposed by this motion. *Central Basin etc. Water Dist. v. Fossette* (1965) 235 Cal.App.2d 689,
22 700-701 ["Where a judgment provides for a physical solution of the rights of litigants to use of
23 water, and includes therein appropriate flexibility to meet pertinent changes and developments, it
24 is proper that a trial court should retain jurisdiction over such decree."]; Cal. Const., Art. X, Sec.
25 2; see also *Joslin v. Marin Mun. Water Dist.* (1967) 67 Cal. 2d 132.

26 Included within the Judgment's reserved jurisdiction is the authority to manage rights to
27 use basin storage space. *Central and West Basin Water Replenishment District, supra*, 109
28 Cal.App.4th at 903-904. The Appellate Court's ruling on the earlier Central Basin storage

1 motion held that this Court had jurisdiction over the motion, explaining that “allocation of
2 storage space falls within [the Judgment’s broad reservation of jurisdiction] provision” (*Id.*)
3 Like the earlier storage motion, this motion seeks to establish a protocol for use and management
4 of the Basin’s storage resources, albeit now pursuant to a framework supported by WRD, the
5 vast majority of water rights holders, and other water stakeholders. The Judgment’s reserved
6 jurisdiction provides this Court ample authority to amend the Judgment as proposed if it deems
7 prudent to facilitate the optimal use of the Basin under the physical solution.

8
9 **PART IV**

10
11 **THE JUDGMENT EMBODIES A PHYSICAL SOLUTION TO MAXIMIZE THE**
12 **BENEFICIAL USE OF THE BASIN’S WATER RESOURCES WITHOUT CAUSING**
13 **HARM TO EXISTING RIGHTS**

14
15 **A. The Judgment is a Physical Solution Designed to Achieve Maximum Beneficial Use**
16 **of Water Resources for the Public Benefit.**

17 The Judgment is a “physical solution” that imposes a permanent management structure to
18 maximize the beneficial use of the Basin’s water resources. *Lodi v. East Bay Muni. Utility Dist.*
19 (1936) 7 Cal.2d 316, 341; *Rancho Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 558-562;
20 *California Water Service Co. v. Edward Sidebotham & Sons* (1964) 224 Cal.App.2d 715, 731-
21 732 [discussing the physical solution adopted for the West Coast Basin]. The physical solution
22 doctrine is the practical application of Article X, Section 2 of the California Constitution, which
23 provides, in part:

24 “The general welfare requires that the water resources of the State be put to
25 beneficial use to the fullest extent of which they are capable, and that the waste or
26 unreasonable use or unreasonable method of use of water be prevented, and that
27 the conservation of such waters is to be exercised with a view to the reasonable
28 and beneficial use thereof in the interest of the people and for the public welfare.”

1 The same mandate for maximum beneficial use of water resources is codified in the
2 Water Code. (See Water Code §§ 100,102, and 105). Section 105, for instance, provides:

3 “It is hereby declared that the protection of the public interest in the development
4 of the water resources of the State is of vital concern to the people of the State and
5 that the State shall determine in what way the water of the State, both surface and
6 underground, should be developed for the greatest public benefit.”

7 To achieve the constitutional mandate, a court may use its equitable powers to implement
8 a physical solution that alters and improves upon the water management opportunities afforded
9 by the common law. *Vail, supra*, 11 Cal.2d at 558-559. For example, like the Judgment in this
10 case, a physical solution can quantify and cap groundwater rights, including overlying rights,
11 which under the common law are not otherwise quantified. *Tulare Irrigation District v. Lindsay-*
12 *Strathmore Irrigation District* (1935) 3 Cal.2d 489. Likewise, a physical solution can allow for
13 the application of improved groundwater management techniques like transfer of overlying
14 rights and carryover of unpumped rights, options that are not otherwise expressly authorized by
15 common law. A physical solution can also include management by a court-appointed
16 watermaster, special shortage provisions, groundwater replenishment protocols, and virtually any
17 other provision deemed by the court to advance the constitutional mandate.

18 There are limits to the court’s authority in developing a physical solution. Notably, the
19 physical solution cannot unreasonably impair the existing water rights or other property rights, or
20 result in waste of water. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1249;
21 *Vail, supra*, 11 Cal.2d at 558-559. However, within these parameters, a court has an affirmative
22 duty, either pursuant to motion or *sua sponte*, to fashion a physical solution to maximize the
23 beneficial use of the resource where possible. *Lodi*, 7 Cal.2d at 341; *Vail*, 11 Cal.2d at 559.

24 **B. The Basin’s Dewatered Storage Space is Subject to the Physical Solution Doctrine**

25 The management of the Basin’s dewatered storage space is subject to the Constitution’s
26 directive that water resources be put to beneficial use to the fullest extent of which they are
27 capable, and therefore falls within the physical solution governing use of the Basin’s water
28 resources. The Appellate Court’s ruling on the earlier Central Basin motion explained this point

1 as follows:

2 “The purpose of the constitutional amendment was to ensure that
3 the state's water resources would be ‘available for the constantly
4 increasing needs of all of its people.’ (citation) This broad
5 constitutional provision encompasses ‘the use of all of the water
6 within the state.’ (citation) It is applicable to the ‘settlement of all
7 water controversies’ (citation) and to surface storage. (citation)
8 Subsurface storage, which is akin to a natural reservoir (citation)
9 also falls within this broad provision.”

10 *Central and West Basin Water Replenishment District, supra*, 109 Cal.App.4th at 904-905.

11 Further, the California Water Code contains express language encouraging the storage of
12 water that would otherwise be wasted. As provided in California Water Code section 1242,

13 “the storing of water underground, including the diversion of streams and the
14 flowing of water on lands necessary to the accomplishment of such storage,
15 constitutes a beneficial use of water if the water is thereafter applied to the
16 beneficial purposes for which the appropriation for storage was made.”

17 Cal. Water Code §1242. Indeed this Court has determined that storage of water is integral to
18 basin management and within the scope of the Judgment. *Central and West Basin Water*
19 *Replenishment District, supra*, 109 Cal.App.4th at 903-904.

20 The legal conclusions that result from the analysis above are as follows:

- 21 • The Basin’s dewatered storage space falls within the court’s reserved
22 jurisdiction;
- 23 • The use of the Basin’s dewatered storage space is encouraged by law;
- 24 • Pursuant to the physical solution doctrine, this Court has wide latitude to
25 adapt and build upon the common law to ensure maximum beneficial use
26 of the Basin’s storage resources; and
- 27 • In doing so, the Court cannot materially harm existing adjudicated water
28 rights, other property rights, or adopt an order that would result in waste of

1 water.

2 As explained next, the proposed Amendments are consistent with common law rules that
3 authorize foreign water to be stored in dewatered groundwater storage space, commingled, and
4 later recaptured. However, the Amendments also provide the additional implementation details
5 not expressly articulated in existing case law. These additional provisions are necessary to
6 resolve the prolific uncertainties and potential conflicts that now inhibit the use of the Basins'
7 dewatered storage space. (See Declarations of Kevin Wattier and James Glancy). The
8 Amendments thus provide the requisite organization and institutional certainty to achieve full
9 beneficial use of the storage resource. The Amendments also include sufficient protections to
10 ensure that the physical solution, including use of available storage space, will not do harm to the
11 resource, existing adjudicated rights or other property rights, nor otherwise unreasonably burden
12 anyone. It is therefore appropriate and prudent for this Court to grant this motion.

13
14 **C. The Proposed Amendments Build Upon the Common Law to Facilitate Organized**
15 **and Coordinated Use of Underground Storage Space for Maximum Beneficial Use**

16 As pointed out previously, the structure for groundwater storage proposed by the
17 Amendments is entirely consistent with the basic holdings of *Glendale* and *San Fernando*. In
18 fact, the Amendments, which emerged from the comprehensive mediation process, *facilitate* the
19 storage of groundwater as permitted in those cases. They provide institutional stability and the
20 confidence concerning storage in the Basins. (See Declarations of Kevin Wattier and James
21 Glancy). They also allow for proper record keeping, groundwater modeling, and public
22 hearings. They establish a procedure for reasonable regulation of extractions of stored water
23 above a certain threshold, so as to ensure that extractions of large quantities over a short period
24 of time do not create material physical harm to the Basin or to water rights holders.¹¹

25 The Judgment already provides water right holders with the right to use a portion of the
26

27 ¹¹ The proposed Amendments limit a party's right to extract its groundwater, whether
28 originating in APA, carryover, or stored water, to 120% of the adjudicated water right (plus
water leased in), unless the Storage Panel finds there is no Material Physical Harm (see proposed
Amendment at Section I(B)).

1 Basin's storage space to carry over unpumped groundwater from one year to the next. It allows
2 a party to forego the production of a portion of that party's water rights in a given year, without
3 having to worry about losing the ability to extract that water in the next year. However the
4 existing framework is unnecessarily limiting in that it *permits carryover for one year only* and
5 limits the quantity of water permitted to be carried over. As a result, the ability to place water
6 into storage through carryover is foreclosed. (See Declaration of James McDaniel).

7 The proposed Amendments allow for the expansion of this carryover right, in a way
8 similar to past expansions permitted by the Court. With approval of the Amendments, unused
9 carryover water is poised to become an important means to expand the availability of local
10 supplies to meet the demands of the Basins' users. (See Declaration of James McDaniel).

11 For many years, WRD has achieved groundwater replenishment through a process called
12 "in-lieu" replenishment, whereby WRD pays a water rights holder to not produce groundwater,
13 and instead to take water from surface delivery sources. (See Declaration of Robb Whitaker).
14 The procedure has worked well for decades to manage water extractions and *replenish*
15 groundwater supplies, but it has never been used to permit "storage."

16 Now, the Amendments propose to use a similar concept to increase supplies of *stored*
17 water. Water may be stored in the Basin through "in-lieu" storage by using surplus surface water
18 supplies when available to satisfy demands in lieu of groundwater, and carrying over pumping
19 rights into storage for production and use when surface water supplies are less reliable. To place
20 unused carryover water into permanent storage a producer must prepay the replenishment
21 assessment, so imported water can be procured to replace the water that is to be stored. Thus,
22 though not yet produced, the carryover water is treated as if it had been produced, and
23 "replacement" water is procured by WRD, effectively expanding underground storage. Such
24 expanded use of carryover water removes the pressure to produce all of a party's water rights, or
25 risk losing carryover, and it provides a convenient way for smaller producers to participate in
26 groundwater storage programs. Only by administering groundwater storage through the
27 Judgment, as modified by the Amendments, can this method of storage be implemented, because
28 "carryover" is a creation of the court, available only through the Judgment's physical solution.

1 The proposed Amendments also create categories for groundwater storage. The structure
2 includes the creation of “Individual Storage Accounts” on behalf of each water right holder that
3 are equal to 40% of each water right holder’s APA (see Amendments, Section IV(B)), giving
4 water rights holders the assurance that they will have the ability to store water in the future. The
5 Amendments next propose a “Community Storage Pool” (see Amendments, Section IV(C)),
6 providing confidence that storage space will be available even if an individual storage account
7 has been filled. Under Section IV(D), the Judgment further sets aside a category of storage for
8 “Regional Storage” projects to allow for new opportunities to store water for regional benefit.
9 Finally, in Section IV(J), the Judgment allows for a “Basin Operating Reserve” to be used by
10 WRD in fulfilling its replenishment function. The Basin Operating Reserve effectively allows
11 WRD to acquire surplus supplies when available for future replenishment needs, without
12 impacting the ability of water rights holders to store water themselves.

13 These categories establish limited priorities for certain uses under prescribed criteria,
14 allowing diversity of storage opportunities and broad potential participation by those who might
15 not otherwise be able to store water. While establishing the three categories of storage programs
16 and the Basin Operating Reserve, the Amendments also allow anyone to occupy any unused
17 space within any of the categories on a “space-available” basis. This hybrid approach establishes
18 desirable certainty and diversity of opportunities, but also encourages the maximum beneficial
19 use of the dewatered space available for storage projects. (See e.g., Third Amended Judgment,
20 Section IV(A)).

21 The only practical and sensible method to manage storage from varying sources is a
22 single, unified judgment that implements a comprehensive and organized water resource
23 management plan controlling both extractions and storage of water. The court has the authority
24 to do this, and doing so will bring order to groundwater storage after years of conflict and
25 paralysis. Stated differently, storage space is one of several important basin resources to be
26 managed as an integrated whole.

27 Rational conjunctive use, including a robust storage program and water conservation, will
28 make the difference between supply sufficiency and dangerous shortage. (Declaration of Mark

1 Cowin). Projected population growth, climate change, and competing environmental demands
2 will only heighten the need for groundwater storage. Amending the Judgment is a prerequisite to
3 allow this new era of water management.
4

5 **D. The Proposed Amendments Will Not Adversely Affect Prior Rights, WRD's**
6 **Replenishment Activities, Overlying Land Uses or Other Property Rights**

7 In establishing (or in this case expanding) a physical solution, a court may not
8 unreasonably impair priority water rights or other property rights, and cannot issue an order that
9 results in waste of the water resource. *Barstow, supra*, 23 Cal.4th at 1249. The proposed
10 Amendments will not violate these limitations. Adjudicated water rights will be substantially
11 benefited by the new conjunctive use opportunities, which will afford greater water supply
12 reliability. (See Declarations of James Glancy, Robb Whitaker, Rob Beste, James McDaniel,
13 and David Sunding, Ph.D.). Moreover, establishing a Basin Operating Reserve will allow WRD
14 to fulfill its replenishment functions more cost-effectively. (See Declaration of Robb Whitaker).

15 To add further protections for existing adjudicated rights and to ensure that stored water
16 does not result in water tables rising too high, the Amendments quantify the amount of
17 dewatered storage space available for use. The proposed storage limitations were established
18 following comprehensive groundwater modeling and technical evaluation of the Basins and their
19 ability to accommodate stored water. (See Declaration of Theodore Johnson). Numerous
20 additional safeguards were also included in the proposed Amendments to avoid any material
21 harm to existing rights holders or other common law rights, including limits on the quantity of
22 water that may be recovered in any particular year, discretionary review of programs involving
23 construction of new infrastructure, and use of water spreading facilities. (See Declaration of
24 Robb Whitaker). Finally, the proposed Amendments will not result in waste of water, and are
25 targeted at just the contrary in that the proposed Amendments seek to assure full beneficial use of
26 all water resources available from the Basin.

27 As noted above, there is considerable case law limiting a court's authority to adopt a
28 physical solution that would burden priority water rights. *Barstow, supra*, 23 Cal.4th at 1249;

1 *Vail, supra*, 11 Cal2d at 558, 559. However, the concern reflected in that limitation does not
2 apply here since the proposed Amendments will not burden, but rather benefit, existing
3 adjudicated rights. Further, *there is no analogous priority right to store water* that must be
4 protected within the context of the Court's prescribed physical solution. Neither holders of
5 existing adjudicated rights nor WRD possess an exclusive right, or any other priority right, to use
6 the Basin for storage. (See *Central and West Basin Water Replenishment District v. Southern*
7 *California Water Co., supra* 109 Cal.App.4th at 916-917). Moreover, the only storage "right"
8 recognized in California is the right to recapture an amount of water previously stored, but this
9 right is only established *after* foreign water has been introduced by the storing party. *San*
10 *Fernando, supra*, 14 Cal.3d at 257, 263; *Glendale, supra*, 23 Cal.2d at 76-77.

11 Therefore, unless and until an actual storage program is implemented, no entity (whether
12 a party, WRD, or a non-party), possesses a pre-existing right to the *potential* opportunity to store
13 water and thereafter gain the right of recapture established by *Glendale* and *San Fernando*. *Id.*¹²
14 There are no pre-existing rights to use the Basin's dewatered storage space. Instead, storage
15 space is used on a "first come, first serve" basis, consistent with common law principles. The
16 proposed Amendments do not vary from this principle. Rather, the Amendments establish an
17 orderly court-supervised physical arrangement to organize that use and minimize waste.

18
19 **E. The Amendments Permit Interbasin Transfers of Stored Water from West Basin to**
20 **Central Basin, Which Will Allow For Conservation of Water and More-Efficient**
21 **Replenishment of Supplies**

22 Section IV(I) of the Amendments permit the limited transfer of stored water from the
23 West Coast Basin to the Central Basin. The provision, in effect, allows a contractual
24 arrangement that would permit a producer in the West Coast Basin to put water into storage, and
25

26 ¹² The rights of non-parties to the Judgment are unaffected. Because of the jurisdictional
27 limits of the Judgment, this motion only has bearing on the rights of parties to the Judgment (that
28 is, WRD and the water rights holders). The Third Amended Judgment merely proposes that
those without water rights who seek to store water within the Basin intervene and become parties
to the adjudication, in the same way they would be required to become parties in order to
produce groundwater.

1 then allow additional production in the Central Basin without physical transfer of the water itself.

2 This provision makes tremendous sense in light of the hydrology of the region, in part
3 because increased physical placement of water should be encouraged in the West Coast Basin to
4 take pressure off the seawater intrusion barrier injection wells maintained by WRD (See
5 Declaration of Theodore Johnson). Additionally, because the Amendments require that,
6 regardless of its source, stored water that is recovered must be replenished in the basin from
7 which it is produced (see Third Amended Judgment Section IV(I)(2)), efficient replenishment of
8 water is encouraged. The extensive spreading facilities utilized for replenishment are located
9 exclusively in the Central Basin and replenishment through the spreading grounds is far less
10 costly than replacement through injection wells in the West Basin. Thus, permitting interbasin
11 transfer of stored water allows for more efficient prevention of seawater intrusion, while
12 encouraging additional replenishment in the Central Basin, where it can occur most effectively
13 and efficiently (See Declarations of Robb Whitaker and James McDaniel).

14 No one's rights are harmed by allowing such a transfer, and both Basins are protected
15 under Watermaster review. Creating this opportunity means that thousands of acre-feet of
16 presently underutilized rights will be brought into production and used to meet the region's needs
17 (See Declarations of Rob Beste and James McDaniel). Additionally, the Third Amended
18 Judgment provides that the producers in either basin may, by majority protest, object to and
19 prevent transfers of stored water across the basin boundary above certain limits (See Third
20 Amended Judgment, Section IV(I)(3)).

21
22 **F. The Proposed Rules and Regulations for Watermaster Provide Further Detailed**
23 **Guidance for Implementation of the Groundwater Storage Program**

24 The Amendments propose a new "participative" Watermaster, where authority is shared
25 and procedures are carefully defined. The new Watermaster structure allows for the participation
26 and cooperation of interested local parties, and combines the expertise of the water rights holders
27 with that of WRD (see Third Amended Judgment Section II). The structure is intended to
28 continue the important duties of Watermaster as to recordkeeping, monitoring and reporting,

1 without undue interference in the operations of the parties or the storage of water. Under
2 specified circumstances the Watermaster becomes involved in the evaluation of individual
3 storage projects. Consistent with one primary objective of the Judgment Amendments, a
4 proposed project is to be evaluated by focusing on the prevention of "Material Physical Harm."
5 Thus, as is the case with the rest of the court's physical solution, the Court creates a rational
6 governance structure while protecting the Basins and preserving existing rights.

7 Within the mediated process, the parties also met to prepare draft Rules to be adopted by
8 Watermaster in connection with the implementation of the groundwater storage program
9 permitted under the Amendments. Those draft Rules are attached to the proposed Order as its
10 Exhibit B. The Rules provide additional detail to explain the implementation of the program and
11 the proposed operation of Watermaster. The Rules are intended to be fully consistent with the
12 Amendments and with the Judgment's physical solution.

13
14 **PART V**

15
16 **THERE IS IMMENSE PRACTICAL, SOCIAL AND ECONOMIC BENEFIT**
17 **ASSOCIATED WITH AUGMENTED GROUNDWATER STORAGE IN THE CENTRAL**
18 **AND WEST COAST BASINS**

19
20 **A. The Proposed Amendments are Now Needed More than Ever to Help the Region**
21 **Satisfy Water Demands in the Face of Acute and Growing Water Supply Challenges**

22 Water storage has always been important to Southern California. Supplies are uneven,
23 and large amounts of water must be imported over hundreds of miles. Virtually all of the local
24 precipitation comes during winter months and is highly variable year to year. Imported supplies
25 are also subject to substantial variance seasonally and year to year. (See Declaration of Mark
26 Cowin). Compounding the impacts of decreases in availability and reliability of imported
27 supplies are recent and projected dramatic increases in the cost of those supplies. (See
28 Declarations of Kevin Wattier and David Sunding, Ph.D.).

1 As a result, today, the region faces a water supply crisis that demands that public
2 resources be put to full beneficial use. Imported water from the State Water Project (SWP), the
3 Colorado River, and the City of Los Angeles' Owens Valley supply have each been severely
4 limited. (See Declarations of Mark Cowin, Robb Whitaker and James McDaniel).
5 Environmental restrictions on imported water, which seek to protect endangered species, are
6 likely to burden imported water supplies for many years, and indeed may result in permanent
7 limitations. (See Declaration of Mark Cowin). Over the long term, population growth and
8 projected adverse impacts of climate change will likely additionally impair Southern California's
9 water supply.

10 The region cannot depend upon old water management strategies. We can no longer
11 accept the waste that comes from the failure to utilize available underground storage space
12 simply as a result of the paralysis of local water "politics." Indeed, the State encourages local
13 management authorities to implement conjunctive water management programs, including
14 improved use of available groundwater storage space, as one of the important techniques needed
15 to augment local supplies, and it provides significant funding for this purpose. (Declaration of
16 Mark Cowin). The Amendments would provide the legal certainty required by the State and
17 local governments as a condition of that funding. (See Declaration of David Sunding, Ph.D.).

18 The region requires the guidance of this Court to implement a comprehensive physical
19 solution for the conjunctive use of each Basin, including the ability to make full use of their
20 water resources through the storage of groundwater. If adopted, the proposed Amendments will
21 create the requisite legal certainty needed to encourage optimal beneficial use of each Basin's
22 dewatered storage space, and will create a sensible management framework that will allow for
23 expeditious resolution of future conflicts. The result will be to put nearly a half million acre-feet
24 of currently dewatered storage space to use in the Central Basin and West Coast Basin in a
25 manner that effectuates California Constitutional mandates.

26 ///

27 ///

28 ///

1 **B. If Adopted, the Proposed Amendments will Achieve Over \$500,000,00.00 in Benefits**
2 **for the Region**

3 The moving parties have engaged Dr. David Sunding, a prominent water economist, to
4 evaluate the likely economic effects of the proposed Amendments. Dr. Sunding is a Professor in
5 the Department of Agricultural and Resource Economics at the University of California at
6 Berkeley, the Co-Director at the Berkeley Water Center and the Principal of Berkeley Economic
7 Consulting. Dr. Sunding's previous experience includes acting as a Special Consultant at
8 National Economic Research Associates, and serving as a Senior Economist for the President's
9 Council of Economic Advisers. Dr. Sunding has published dozens of articles on the economic
10 impacts of water rights and supply and is regularly asked to brief such legislative and
11 governmental agencies as the U.S. Bureau of Reclamation, the Congressional Water Caucus, the
12 U.S. Senate, and the U.S. Environmental Protection Agency on various issues related to
13 economics and water supply reliability. (See Declaration of David Sunding, Ph.D.).

14 The scope of Dr. Sunding's work involved measuring the economic benefits to the Basins
15 as a result of the proposed Amendments. In doing so, Dr. Sunding evaluated the cost savings
16 resulting from increased storage and other programs made possible by the proposed
17 Amendments, factoring in the capital expenditures needed to undertake those programs.

18 Dr. Sunding evaluated the difference in costs and benefits that would result from the
19 proposed Amendments compared to a baseline condition in which status quo under the current
20 Judgment is maintained. (See Declaration of David Sunding, Ph.D.). The report considers the
21 expected net benefits of implementation of the Amendments over the 22-year period from 2009-
22 2030, which coincides with the timeframe of the proposed Amendments.

23 To predict those net benefits, Dr. Sunding relied on 82 years of historic hydrology and
24 applied that historic rainfall data, but under "post-Wanger" supply rules.¹³ Dr. Sunding based
25 his analysis on different hypothetical scenarios that may occur as a result of implementation of
26 the Amendments depending on whether recycled water is available, and in what quantity, and the

27
28 ¹³ The economic analysis assumes that the federal court holding issued on August 31,
2007 by Judge Oliver Wanger; which ordered restrictions on State Water Project deliveries by
twenty to thirty percent, will remain in place as necessary for environmental mitigation purposes.

1 extent to which water agencies rely on imported water purchased from the Metropolitan Water
2 District of Southern California. Dr. Sunding also analyzed the impacts of the proposed
3 Amendments on the lease market to determine whether any adverse impacts would occur.

4 Dr. Sunding concludes:

- 5 • the Amendments will encourage increased local supply through increased storage
- 6 • the Amendments will encourage increased reliability of supply, especially during
7 a drought or imported supply restriction
- 8 • the Amendments will encourage increased use and development of recycled
9 water
- 10 • the Amendments will encourage increased efficiency in the capture of storm
11 flow and other local supplies
- 12 • the Amendments will encourage increased use of now-underutilized groundwater
13 pumping rights.

14 Dr. Sunding concludes that over the period 2009-2030, the benefits of the proposed
15 Amendments to the entire region that relies on the Basins ranges between \$560 million and \$808
16 million, depending on which management scenario, or combination of scenarios, occurs. These
17 benefits are primarily attributable to the lowering of the average cost of water service to
18 customers served by the Basins and improving the reliability of the service that those customers
19 receive. By any measure, these are the types of public benefits that the California Constitution
20 and Water Code mandate for the development of underground water resources. See generally
21 *Central and West Basin Water Replenishment Dist., supra*, at 904, 912-913.

22 Dr. Sunding also determined that implementation of the Amendments would not result in
23 material adverse impacts to the Basins' water rights lease market, under any scenario, due to the
24 added reliability created by the Amendments, including being able to transfer stored water across
25 Basin boundaries. In short, the expert analysis concludes that, under every pattern of rainfall that
26 has occurred during the last 82 years, the proposed Amendments are very likely to provide a
27 large and measurable benefit to the region. (See Declaration of David Sunding, Ph.D.).

28 ///

1 **THE NEGOTIATED SOLUTION EMBODIED IN THE PROPOSED THIRD AMENDED**
2 **JUDGMENT IS DEPENDENT UPON CERTAIN CONDITIONS AND THE COURT'S**
3 **RULING SHOULD SO REFLECT**
4

5 The mediated process resulted in a negotiated solution whereby the parties agreed to
6 implement a comprehensive groundwater storage program upon certain conditions. Of particular
7 importance was the need to maintain a uniform WRD replenishment assessment across both
8 Basins.¹⁴ However, rather than mandate that such be the case, the proposed Order submitted
9 with this motion provides that the court's amendment of the Central Basin Judgment will be
10 effective only for so long as there continues to be a legal requirement that the replenishment
11 assessment be uniform (see Wat. Code § 60317). Should that situation change, the proposed
12 Order provides that the Court will hold a hearing to determine whatever appropriate relief may
13 be necessary to promote conservation and maximum beneficial use of the Basin's water resources
14 and avoid waste of water, and to protect the reasonable investments made in reliance on these
15 Amendments. (See Declarations of James Glancy and Rob Beste).

16 This requirement of a uniform replenishment assessment is based in the desire to avoid
17 unnecessary conflict over the respective rights of the parties in each Basin against the parties in
18 the other Basin. For example, certain parties in the West Basin may claim that the Central Basin
19 owes an historical underground flow of water into the West Basin. Conversely, certain parties in
20 the Central Basin may claim that the present uniform replenishment assessment provides a
21 subsidy to West Coast Basin replenishment, ignoring any benefit accruing to Central Basin as a
22 result of the maintenance of the seawater intrusion barriers. The stipulating parties have, for
23 now, foregone these claims related to the uniform assessment and base underflow in the interest
24 of bringing comprehensive groundwater storage to the region. They have agreed that the success
25 of the storage program can be evaluated in the future, and they will assess their position then.
26 (See Stipulation filed concurrently herewith).

27
28 _____
¹⁴ The need for this condition and certain other conditions is more fully explained in the
attached declarations of James Glancy and Rob Beste.

1 This court should preserve that flexibility by adopting the limitations negotiated in the
2 mediated process.

3
4 **CONCLUSION**
5

6 For two generations, the underground water resources of the Central Basin have been
7 managed by the Court. Enlightened policy, first devised in the 1950's, has served the region
8 well. Today, the groundwater levels that were decimated by overproduction have largely
9 recovered, and there is in place a comprehensive structure that allows for production, transfer
10 and replenishment of groundwater rights. The system works, but it is incomplete — it fails to
11 make full beneficial use of the resource.

12 Today's conditions demand that water be stored when it is plentiful so it can be drawn
13 upon when it is not. Through a long and difficult process, a majority of the water rights in the
14 Central Basin and the West Coast Basin have reached an agreement on a framework for future
15 management of the Basins in a manner that will have profound effects on the ability of the region
16 to adapt to ever increasing water supply constraints which, if not managed properly, threaten the
17 availability and reliability of the region's water supplies.

18 The Judgment is designed to satisfy the State's constitutional mandate to maximize the
19 reasonable and beneficial use of the Basin's resources as circumstances evolve. Because prudent
20 use of the Basin's dewatered storage space is now required to satisfy this standard, this motion is
21 consistent with and advances this legal requirement. Moreover, the oversight of the Court,
22 through its Watermaster, as contemplated by the Amendments, ensures that beneficial use of
23 storage space will be undertaken in a coordinated manner that is compatible with all other
24 beneficial uses of the Basin. Simply put, this motion effectively furthers the Judgment's
25 fundamental purpose of achieving a balanced basin that provides the greatest benefit to the
26 region's water users, all without impacting rights otherwise held to make use of that resource.

27 More than 4 million people depend upon the Central and West Coast Basins for a
28 significant portion of their water supply. By approving the Amendments, this court can help

1 assure that the vast storage space within each basin will, finally, be put to reasonable beneficial
2 use to serve the public. It is time to stop the waste.

3
4 Respectfully submitted,

5
6 Lagerlof, Senecal, Gosney & Kruse, LLP

7
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12
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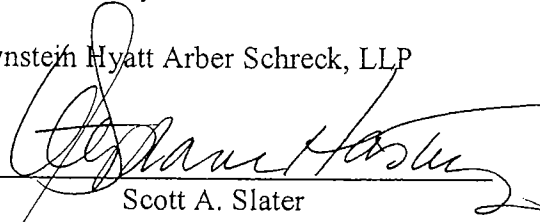
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12
13 Brownstein Hyatt Arber Schreck, LLP

14
15 By: _____

16 Scott A. Slater
17 Attorneys for Defendant,
18 Golden State Water Company

19
20 Alston & Bird

21
22 By: _____

23 Edward J. Casey
24 Attorneys for Plaintiff,
25 Water Replenishment District of
26 Southern California

27
28 Nossaman, LLP

By: _____

Fred A. Fudacz
Attorneys for Defendant,
California Water Service Co.

1 assure that the vast storage space within each basin will, finally, be put to reasonable beneficial
2 use to serve the public. It is time to stop the waste.

3
4 Respectfully submitted,

5
6 Lagerlof, Senecal, Gosney & Kruse, LLP

7
8 By: _____
9 William F. Kruse
10 Attorneys for Defendant,
11 City of Lakewood

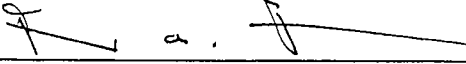
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18 Golden State Water Company

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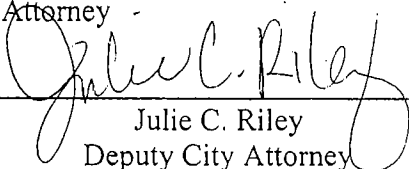
21
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23 Edward J. Casey
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Fred A. Fudacz
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CITY OF LOS ANGELES
Rockard J. Delgadillo
City Attorney

By: 
Julie C. Riley
Deputy City Attorney
Attorney for Defendant
City of Los Angeles

Leal & Trejo, LLP

By: _____
Francisco Leal
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City of Huntington Park

CITY OF LONG BEACH
Robert E. Shannon
City Attorney

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J. Charles Parkin
Principal Deputy City Attorney
Attorney for Defendant,
City of Long Beach

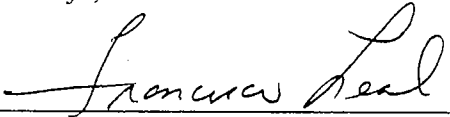
CITY OF VERNON

By: _____
Jeff A. Harrison
City Attorney
City of Vernon

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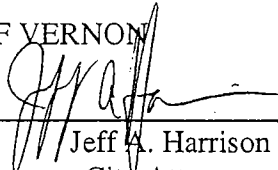
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