No. F075451

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

ANTELOPE VALLEY GROUNDWATER CASES

Appeal From an Order of the Superior Court,
County of Los Angeles, Case No. JCCP 4408
The Honorable Jack Komar, Judge Presiding.

OPPOSITION TO PETITION FOR WRIT OF SUPERSEDEAS AND REQUEST FOR TEMPORARY STAY

PRICE, POSTEL & PARMA LLP
Craig A. Parton, State Bar No. 132759
Timothy E. Metzinger, State Bar No. 145266
Cameron Goodman, State Bar No. 307679
200 East Carrillo Street, Fourth Floor
Santa Barbara, California 93101
Telephone: (805) 962-0011
Email: tem@ppplaw.com

Attorneys for Respondent
ANTELOPE VALLEY WATERMASTER

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FIFTH APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: F075451
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 145266 NAME: Timothy E. Metzinger FIRM NAME: PRICE, POSTEL & PARMA LLP STREET ADDRESS: 200 E. Carrillo St., Ste. 400 CITY: SANTA BARBARA STATE: CA ZIP CODE: 93101 TELEPHONE NO.: (805) 962-0011 FAX NO.: (805) 965-3978 E-MAIL ADDRESS: tem@ppplaw.com ATTORNEY FOR (*name*): Antelope Valley Watermaster	SUPERIOR COURT CASE NUMBER: JCCP 4408
APPELLANT/ PETITIONER: Phelan Pinon Hills Community Services District RESPONDENT/ REAL PARTY IN INTEREST: Antelope Valley Groundwater Cases	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Antelope Valley Watermaster

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 5, 2020

Timothy E. Metzinger
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

Page

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS 2

I. INTRODUCTION 6

II. STATEMENT OF FACTS 9

A. THE COMMENCEMENT OF THE ANTELOPE VALLEY GROUNDWATER CASES 9

B. THE JUDGMENT IN THE TRIAL COURT AND THE CREATION OF RESPONDENT ANTELOPE VALLEY WATERMASTER 9

C. THE EFFECT OF THE JUDGMENT ON PHELAN 11

D. PHELAN'S EFFORT TO AVOID PAYING FOR WATER THAT IT TOOK FROM THE BASIN 13

III. LEGAL DISCUSSION 14

A. SUPERSEDAS IS AVAILABLE ONLY IN EXCEPTIONAL CIRCUMSTANCES 14

B. THE WRIT AND STAY REQUEST SHOULD BE DENIED BECAUSE NO AUTOMATIC STAY APPLIES.....15

C. THE WRIT AND STAY REQUEST SHOULD BE DENIED BECAUSE PHELAN HAS FAILED TO SHOW IRREPARABLE HARM 17

1. The Trial Court's Injunction Does Not Require Phelan to Post a Bond 17

2. Phelan Will Not Suffer Irreparable Harm by Paying for the Water That It Takes 18

3. The Harm to the Basin Would Exceed any Harm Suffered by Phelan 19

D. THE TRIAL COURT DID NOT ERR IN FINDING THAT PHELAN IS OBLIGATED TO PAY FOR THE 2016 AND 2017 RWAS 21

IV. CONCLUSION 25

CERTIFICATE OF WORD COUNT 26

TABLE OF AUTHORITIES

Page

CASE LAW

Agricultural Labor Relations Board v. Tex-Cal Land Management (1987) 43 Cal.3d 696 6

Kane v. Universal Film Exchanges (1932) 32 Cal.App.2d 365 14

Mills v. County of Trinity (1979) 98 Cal.App.3d 859 14

Nielsen v. Stumbos (1990) 226 Cal.App.3d 301 14

People ex rel. S.F. Bay Etc. Com. v. Town of Emeryville (1968) 69 Cal.2d 533 14

People v. Mobile Magic Sales, Inc. (1979) 96 Cal.App.3d 1 6

United Railroads of San Francisco v. Superior Court (1916) 172 Cal. 80 15

STATUTES

Code of Civil Procedure
Section 917.1 17
Section 923 14
Section 995.220 17

I. INTRODUCTION

Petitioner and Appellant Phelan Piñon Hills Community Services District ("Phelan") seeks to stay an injunction by the trial court prohibiting Phelan from pumping water from the Antelope Valley Groundwater Basin ("Basin") – water that does not belong to Phelan – unless Phelan pays for the water it takes. The purpose of the payment, called a Replacement Water Assessment ("RWA"), is to enable Respondent Antelope Valley Watermaster ("Watermaster") to purchase an equivalent amount of water from the State Water Project to replace the water taken by Phelan. Although the trial court's injunction was issued as part of a judgment entered in 2015, Phelan pumped water from the Basin in 2016 and 2017 without paying for such water as required by the judgment.

The Petition should be denied because Phelan has failed to show that the trial court's injunction, which is prohibitory in nature, is automatically stayed by Phelan's appeal. Prohibitory injunctions are not automatically stayed on appeal because they require no enforcement proceedings that could be stayed. (*Agricultural Labor Relations Board v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709.) An injunction is prohibitory in nature if it "seeks to restrain a party from a course of conduct or to halt a particular condition." (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13.) In contrast, an injunction is mandatory if it seeks to "compel the performance of a substantive act." (*Ibid.*) Importantly,

"[t]he character of prohibitory injunctive relief, . . . is not changed to mandatory in nature merely because it incidentally requires performance of an affirmative act." (*Ibid.*, citing *United Railroads*, 172 Cal. 80, 88-89.)

It cannot seriously be contended that the trial court's order prohibiting Phelan from pumping water without paying for it is anything other than prohibitory in nature. Compliance with a mandatory injunction requires an affirmative act. In this case, however, Phelan can fully comply with the trial court's injunction by not pumping water from the Basin; in other words, by refraining to act. The fact that the injunction does not bar Phelan from effectively acquiring a limited amount of water from the Basin by paying RWAs does not alter the prohibitory nature of the injunction.

Phelan has also failed to show that the balancing of harm favors the issuance of supersedeas. Phelan has submitted no evidence whatsoever supporting its claims that paying for the water it takes would significantly impact its financial reserves or result in a curtailment of services to its customers. In contrast, the harm to the Basin caused by Phelan's refusal to pay RWAs for the water it has extracted from the Basin is clear and immediate. As the trial court expressly found, water taken by Phelan that is not replaced by water from the State Water Project, the purchase of which is funded by RWAs, results in a reduction in the Basin's groundwater, to the direct detriment of the Basin.

Finally, Phelan has failed to demonstrate that it has a meritorious appeal of the trial court's order. Phelan seeks to avail itself of a provision in the underlying judgment that states that, for the first two years of the "Rampdown" period, during which the amount of water pumped by "Producers" will be progressively reduced, no "Producer" will be subject to an RWA. As the trial court correctly found, however, the term "Producer" refers solely to parties with pre-existing overlying, prescriptive, appropriative or other rights to pump water from the Basin. Phelan was found to have no rights whatsoever to the water in the Basin – a finding that Phelan does not challenge in its Petition. Because Phelan is not a "Producer," it is not subject to the "Rampdown" provisions; but it is also not entitled to any abatement of its obligation to pay RWAs for the water it pumps. Phelan's obligation to pay RWAs for all water that it takes from the Basin is expressly and unambiguously set forth in a separate part of the judgment.

Given Phelan's inability to establish good cause for a stay or to demonstrate that it has a meritorious appeal, the petition for writ of supersedeas and request for an immediate stay should be summarily denied.

II. STATEMENT OF FACTS

A. THE COMMENCEMENT OF THE ANTELOPE VALLEY GROUNDWATER CASES

In 2004, Los Angeles County Waterworks Division No. 40 ("Division No. 40") initiated the instant action for a general groundwater

adjudication in an overdrafted groundwater basin in the Antelope Valley (the "Basin") by filing complaints for declaratory and injunctive relief in the Los Angeles and Kern County Superior Courts. District 40's complaints sought a judicial determination of the respective rights of various parties, including Phelan, to extract groundwater from the Basin. In 2005, the Judicial Council of California coordinated both of these actions (and several other lawsuits that had been filed as early as 1999 relating to groundwater rights within the Basin) and assigned the "Antelope Valley Groundwater Cases," Judicial Council Coordination Proceeding No. 4408, to the Honorable Jack Komar. (Petition, Ex. 1, p. 17.)

B. THE JUDGMENT IN THE TRIAL COURT AND THE CREATION OF RESPONDENT ANTELOPE VALLEY WATERMASTER

The trial of this case took place in multiple phases over more than a decade to determine the water rights of the numerous parties representing the majority of groundwater pumping in the overdrafted Basin. (Petition Ex. 1, pp. 4, 113-121.) Based upon the trial court's findings of fact and a stipulation among most of the parties, judgment was entered on December 28, 2015 ("Judgment").

The Judgment adopted a "Physical Solution" (attached to the Judgment as Exhibit A) establishing a legal and practical means for making the maximum reasonable and beneficial use of waters in the Basin. (Petition Ex. 1, pp. 21, 44-45.) The Physical Solution establishes which

parties have water rights in the Basin, quantifies such rights, and establishes a process to eliminate Basin overdraft in which all parties having a right to pump water from the aquifer are required to reduce their pumping over a period of time, and to pay a RWA for any amount of water pumped in excess of their annual entitlement. (Petition Ex. 1, pp. 30-49.) RWA proceeds are then used to purchase "Replacement Water" from the State Water Project in order to replenish the overused groundwater in the Basin and maintain a sustainable equilibrium in groundwater levels. (Petition Ex. 1, pp. 64-65.)

The Judgment established the Watermaster as the entity responsible for administering and managing the Physical Solution, and granted the Watermaster broad powers and duties as necessary to protect the health of the Basin. (Petition Ex. 1, pp. 59-71.) Among other duties, the Watermaster is responsible for the levying and collection of RWAs, and using the RWA proceeds to purchase Replacement Water for the Basin from the State Water Project. (Petition Ex. 1, pp. 62-65.)

The Judgment provides for a seven-year period (the "Rampdown") commencing in 2016 within which to bring the Basin into balance so that annual groundwater pumping does not exceed naturally occurring groundwater recharge to the Basin (referred to in the Judgment as the "Native Safe Yield"). (Petition Ex. 1, p. 25.) With the gradual reduction of pumping by all water users in the Basin, by the end of the Rampdown

period the total amount of pumping is expected to bring the aquifer into balance, thereby protecting this vital natural resource for future use. The Judgment explicitly excludes "Producers" from the obligation to pay RWAs during the first two years of the Rampdown period (*i.e.*, 2016 and 2017). (Petition Ex. 1, p. 45-47.)

C. THE EFFECT OF THE JUDGMENT ON PHELAN

Phelan is a community services district that provides water to consumers in an area outside the Basin. Phelan acquires water from one well located inside the Basin and from other wells it owns outside the Basin. Because all Basin groundwater used by Phelan is exported for use outside the Basin, Phelan's pumping of groundwater from the Basin deprives the aquifer of natural water "recharge" that would otherwise flow back into the Basin. As a result, all of Phelan's groundwater pumping negatively affects the health of the Basin. (Petition, Exh. 14, p. 490.)

The Judgment determined that Phelan, which had not pumped material amounts of water from the Basin prior to the initiation of the adjudication, does not possess vested legacy rights, appropriative rights, or prescriptive rights to groundwater in the Basin. (Petition Ex. 1, p. 43; Ex. 4.)

Although the Judgment enjoins all parties from transporting Basin groundwater to areas outside the Basin, the Judgment does not bar Phelan from pumping up to 1,200 acre-feet of water per year from the Basin,

subject to certain conditions, including the condition that Phelan must pay RWAs for all water taken, thus enabling the Watermaster to purchase Replacement Water from the State Water Project. (Petition Ex. 1, p. 43; Ex. 4, p. 136 ("If [Phelan] uses water, it must pay for it.").)

The Judgment states that Phelan "has no right to pump groundwater from the Antelope Valley Adjudication Area except under the terms of the Physical Solution." (Petition Ex. 1, p. 5.) Phelan is mentioned only once in the Physical Solution, at Paragraph 6.4.1.2, which states: "The injunction [prohibiting export of water from the Basin] does not apply to any Groundwater Produced within the Basin by [Phelan] and delivered to its service areas, so long as the total Production does not exceed 1,200 acre-feet per Year, such water is available for Production without causing Material Injury, and [Phelan] pays a [RWA] pursuant to Paragraph 9.2, together with any other costs deemed necessary to protect Production Rights decreed herein, on all water Produced and exported in this manner." (Petition, Ex. 1, p. 43.)

D. PHELAN'S EFFORT TO AVOID PAYING FOR WATER THAT IT TOOK FROM THE BASIN

On September 27, 2019, Phelan filed a motion in the trial court for an order relieving it of its obligation to pay RWAs for water that it took from the Basin but did not pay for in 2016 and 2017. On April 26, 2018, Judge Komar denied Phelan's motion requesting an interpretation of the Judgment that would relieve it of its obligation to pay RWAs for the water

it took in those years (the "2018 Order"). (Petition Ex. 4.) Phelan has appealed the 2018 Order in a separate appeal that is pending.

On November 14, 2019, Judge Komar also denied Phelan's motion requesting, *inter alia*, an order requiring the Watermaster to defer the levy and collection of RWAs from Phelan for 2016 and 2017 until a final decision on the appeal of the 2018 Order (the "2019 Order"). (Petition Ex. 14.) Phelan's 2019 motion with respect to deferring the 2016 and 2017 RWAs was based on substantially the same facts and legal arguments as the current appeal. (Petition Ex. 10, pp. 59-60; Ex. 12, pp. 454-455.)

III. LEGAL DISCUSSION

A. SUPERSEDEAS IS AVAILABLE ONLY IN EXCEPTIONAL CIRCUMSTANCES

Code of Civil Procedure section 923 provides that an appellate court may stay proceedings during the pendency of an appeal or issue a writ of supersedeas or other order "to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction." The power to issue such a stay ". . . should be sparingly employed and reserved for the exceptional situation . . . ." (*People ex rel. S. F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal. 2d 533, 537.)

Supersedeas may be granted where a party refuses to acknowledge the applicability of statutory provisions "automatically" staying a judgment while an appeal is pending. (*Nielsen v. Stumbos* (1990) 226 Cal.App.3d 301, 303.) Absent such circumstances, supersedeas will ordinarily be granted

only upon a showing (1) that appellant will suffer irreparable harm absent the stay; (2) that the respondent will not be irreparably harmed by the stay, or if the respondent would suffer some harm, that the prejudice to the appellant from not granting the stay would outweigh the harm to the respondent from granting it; and (3) that the appeal has merit. (See *Mills v. County of Trinity* (1979) 98 Cal.App.3d 859, 861; *Kane v. Universal Film Exchanges* (1932) 32 Cal. App. 2d 365, 367.)

As discussed below, Phelan has failed to establish any of these factors in the present case.

B. THE WRIT AND STAY REQUEST SHOULD BE DENIED BECAUSE NO AUTOMATIC STAY APPLIES

Phelan asserts that the Judgment constitutes a mandatory injunction affecting its right to pump from the Basin, and therefore is automatically stayed pending appeal from the 2018 Order. This is the same mischaracterization of the Judgment that was rejected by Judge Komar in the 2019 Order. (Petition Ex. 14, pp. 491-492.)

To ascertain whether an injunction is mandatory or prohibitory, courts look not to the designation or form of the language in the judgment or order imposing the injunction, but instead look to the terms and effect of the injunction. (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13; *United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 84.) Mandatory relief will "compel the performance of a substantive act or a change in the relative positions of the parties," whereas prohibitive relief

"seeks to restrain a party from a course of conduct or to halt a particular condition." (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13.) "The character of prohibitory injunctive relief, . . . is not changed to mandatory in nature merely because it incidentally requires performance of an affirmative act." (*Ibid.*, citing *United Railroads*, 172 Cal. 80, 88-89.) If an injunction commands an affirmative action in order to prevent a party from engaging in a prohibited act, it is still prohibitive in character and properly issued to halt a continuing violation. (*Ibid.*)

It is well established that prohibitory injunctions are not stayed on appeal because they are self-executing and require no enforcement proceedings that could be stayed. (*Agricultural Labor Relations Board v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 709.)

Here, the injunction prohibiting exports of groundwater from the Basin except as provided in the Judgment is prohibitory in character as it halts all illegal pumping of groundwater in the over-drafted Basin. Those parties to the Judgment who established overlying, appropriative, prescriptive, or other rights to Basin groundwater are permitted to pump up to certain amounts without paying for it. (Petition Ex. 1, pp. 30-42.) Phelan is not such a party. Phelan has no legal rights whatsoever to groundwater in the Basin. The Judgment accordingly prohibits Phelan from taking water from the Basin unless it pays RWAs for the water taken, thus enabling the Watermaster to purchase Replacement Water from the State Water Project.

Significantly, the Judgment does not compel Phelan to undertake any affirmative act; the decision to purchase water from the Basin rests solely with Phelan.

Phelan argues that the Judgment changes Phelan's position because before the Judgment was entered Phelan pumped Basin groundwater without paying RWAs. As Judge Komar found, however, Phelan does not have, and never had, any legal right to water from the Basin. (Petition Ex. 1, p. 43; Ex. 4, pp. 134-138; Ex. 14, p. 490-492.) Consistent with this finding, the Judgment bars Phelan from taking such water unless it pays for it. This is a continuation of Phelan's pre-existing legal status and is entirely prohibitory in nature. Such an injunction is not automatically stayed pending appeal.

C. THE WRIT AND STAY REQUEST SHOULD BE DENIED BECAUSE PHELAN HAS FAILED TO SHOW IRREPARABLE HARM

1. The Trial Court's Injunction Does Not Require Phelan to Post a Bond

Although Phelan admits that the 2018 Order is not a money judgment (Petition pp. 19, 30), Phelan nevertheless contends that, as a government agency, under Code of Civil Procedure sections 917.1 and 995.220 it cannot be required to post a bond or make a deposit to avoid enforcement of a money judgment pending appeal. Phelan argues that the 2018 Order paved the way for the Watermaster's efforts to collect 2016 and 2017 RWAs, and therefore the Watermaster is, somehow, effectively seeking a bond or deposit.

Phelan's assertion lacks merit. The 2018 Order makes no determination of money owing. The trial court merely determined that Phelan cannot pump water for use outside the Basin without paying RWAs, and that Phelan is not entitled to the exemption from paying RWAs during the first two years of the Rampdown period (as this applies only to "Producers"). (Petition Ex. 4.) The obligation to pay RWAs is elective and arises only if Phelan wishes to pump groundwater from the Basin. The 2018 Order reaffirms that, having elected to pump groundwater from the Basin in 2016 and 2017, Phelan is responsible for paying the RWAs imposed by the Watermaster. This is not analogous to Phelan being required to post a bond pending the outcome of the appeal of a money judgment. Phelan's payment of RWAs merely reflects an obligation that Phelan voluntarily incurred when it chose to pump groundwater for export from the Basin.

2. Phelan Will Not Suffer Irreparable Harm By Paying For the Water That It Takes

Without any supporting evidence, Phelan alleges that payment of the 2016 and 2017 RWAs pending the outcome of the appeal will result in several speculative hardships. Phelan suggests that paying these RWAs would negatively impact its financial reserves, requiring reduction in employees, reduction in water conservation efforts, and curtailment of service line replacements. Phelan also suggests that failure to pump from its well inside the Basin "may" result in its inability to meet the demands of its customers and other public agencies. Finally, Phelan speculates that the

Watermaster may not be able to return the RWA funds in the event Phelan prevails in its appeal of the 2018 Order.

The Petition provides no evidence supporting any of these alleged concerns. Payment of RWAs under the Judgment is a mandatory condition of Phelan's groundwater operations in the Basin. The Watermaster's obligation is to administer the Judgment in an equitable manner that avoids material injury to the Basin. As discussed below, the balancing of the hardships weighs substantially in favor of protecting the already depleted groundwater supply in the Basin, regardless of Phelan's alleged financial hardships. Moreover, in the unlikely event Phelan is successful in its appeal of the 2018 Order, the Watermaster has various means to reimburse Phelan for its payment of the 2016 and 2017 RWAs, including but not limited to credits for future RWAs.

3. The Harm to the Basin Would Exceed any Harm Suffered by Phelan

Protection and preservation of the health of the Basin is paramount under the Judgment. One of the central components of the Watermaster's role is to collect sufficient funds from the parties to the Judgment to purchase Replacement Water to replenish Basin groundwater pumped in excess of any party's water rights. In Phelan's case, in order to avoid material injury to the Basin, the Judgment explicitly requires that all water used by Phelan be replaced using RWA proceeds. Phelan is delinquent in paying a total of $1,029,440.72 in RWAs for 2016 and 2017, which represents a total of

1,155.81 acre-feet of Basin groundwater. (Petition Ex. 15, p. 496.) These payments are now several years late. The health of the Basin relies on importation of State Water Project water to replenish this groundwater, and any further delay in bringing the aquifer back to sustainable levels could have severely deleterious results. (Petition Ex. 4, p. 137.)

It is clear that Phelan's right to pump groundwater from the Basin is specifically conditioned on the payment of RWAs for all of the water it uses. For this Court to find that Phelan has no duty to pay RWA for 2016 and 2017 pending the outcome of its appeal of the 2018 Order—in direct contradiction of Judge Komar's findings—is to allow groundwater usage that unquestionably contributes to Basin overdraft because it is pumping in excess of the Native Safe Yield. This would result in injury to the aquifer by permitting all of Phelan's use of groundwater to be exported outside the Basin while simultaneously allowing it to avoid paying for imported supplies of Replacement Water to offset that harm. (Petition Ex. 4, p. 137 ("If, as it requests, [Phelan] is not required to pay for water pumped during 2016 and [2]017, its pumping would contribute to the overdraft by pumping water to which it has no right.").) Such a result is inconsistent with the explicit purpose of the Physical Solution, which is to bring the Basin into balance by allowing groundwater usage only within the Native Safe Yield of the Basin. (Petition Ex. 1, p. 45 (¶ 7.4).)

For these reasons, Judge Komar (by stipulation of the parties) conferred substantial enforcement authority on the Watermaster to levy and collect RWAs. Phelan should not be permitted to escape payment for the water it voluntarily elected to pump based solely on unsupported allegations of financial hardship, which in any case are far outweighed by the harm to the Basin caused by not replacing the groundwater pumped.

D. THE TRIAL COURT DID NOT ERR IN FINDING THAT PHELAN IS OBLIGATED TO PAY FOR THE 2016 AND 2017 RWAs.

In addition to failing to show that the balance of harm favors granting supersedeas, Phelan also fails to show that its appeal of the 2018 Order has merit. As discussed below, Phelan is not a "Producer" as defined in the Judgment because it has no right to use any water in the Basin except as set forth in Paragraph 6.4.1.2. Phelan accordingly is not entitled to the benefits afforded Producers under the Rampdown provisions (waiving the RWA requirement for 2016 and 2017) because all water Phelan pumps from the Basin must be replenished with Replacement Water purchased from the State Water Project. (Petition, Exh. 4.)

Phelan nonetheless asserts that the Rampdown provisions of the Judgment indicate that Phelan is not subject to RWA for its groundwater use in 2016 and 2017. In particular, Phelan refers to the first sentence of Paragraph 8.3 of the Judgment, which provides: "During the first two Years of the Rampdown Period no Producer will be subject to a Replacement

Water Assessment." (Petition Ex. 1, p. 45.) Phelan goes on to argue that it is encompassed by the term "Producer," and therefore is not subject to RWAs for its groundwater use in 2016 and 2017.

As Judge Komar noted in the 2018 Order, it is necessary to look at the entirety of Paragraph 8 of the Judgment to understand why Phelan has no Rampdown rights and therefore is not entitled to the RWA exception afforded "Producers." (Petition Ex. 4, p. 134-135.) The rest of Paragraph 8.3 provides: "During Years three through seven of the Rampdown Period, the amount that each Party may Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual increments, from its Pre-Rampdown Production to its Production Right . . . any amount Produced over the required reduction shall be subject to [RWA]." (Petition Ex. 4, p. 45-46.)

"Parties" to the Judgment with a pre-existing overlying, prescriptive, appropriative or other right to pump water from the Basin's Native Safe Yield are described as "Producers" because they pump water from the Basin for "reasonable and beneficial uses." (Petition Ex. 1, pp. 26-27, 30-42.) Unlike these "Producers," Phelan was found not to have any rights whatsoever to the Native Safe Yield. It made no reasonable and beneficial use of any water it pumped from the Basin, and it exported all such water for use outside the Basin. (Petition Ex. 4, pp. 135-136.) Phelan's only right to pump groundwater under the Judgment is defined and

expressly limited to the provisions of Paragraph 6.4.1.2. Phelan has no other rights, including any Rampdown rights or obligations.

As a party to the Judgment without any right to a share of the groundwater in the Basin, Phelan has no rights or obligations under the Rampdown process, which by its own terms applies only to the reduction of Producers' pre-Judgment water rights in the Basin. Section 8.3 of the Judgment therefore does not apply to Phelan because it had no pre-Judgment rights to the Native Safe Yield. (Petition Ex. 4, p. 136.)

All the Judgment recognizes is that Phelan may pump and export a limited amount of Basin groundwater if certain conditions are met and it pays the Watermaster to replace the water it takes. Because it has no water rights to the Native Safe Yield, but instead only a limited right to export groundwater pursuant to the specific conditions in the Judgment, Phelan is not a "Producer" subject to any of the Rampdown provisions (including the RWA exception for 2016 and 2017).

Phelan also makes the meritless argument that the Judgment lacks any mechanism for assessment of RWAs due from Phelan, and that Paragraph 9.2 of the Judgment (setting forth RWA procedures and requirements) "simply does not apply to Phelan." (Petition pp. 35-36.) The Judgment clearly states that Phelan must pay RWAs "Pursuant to Paragraph 9.2." (Petition Ex. 1, p. 43.) Paragraph 9.2 contains the unambiguous directive that the Watermaster shall impose RWAs on all

parties for any amount of water pumped in excess of their rights to Basin groundwater. Because all water that Phelan pumps from the Basin is in excess of its rights to use groundwater, the Watermaster is authorized and obligated to collect RWAs for all such water. The Judgment could not be clearer on this issue.

Judge Komar has overseen the underlying coordinated groundwater adjudication for approximately 15 years, through every stage of the phased trials, the entry of Judgment, and now during the various post-Judgment motions and appeals. His understanding of the history of the adjudication, the parties' intent with respect to the stipulated Judgment, and the supporting facts and evidence is unsurpassed. In denying Phelan's motion with respect to the 2016 and 2017 RWAs, Judge Komar issued a thoughtful and meticulously crafted opinion based on the clear terms of the Judgment, warning in the process that failure to collect the 2016 and 2017 RWAs would contribute to Basin overdraft by allowing Phelan to pump "water to which it has no right." (Petition Ex. 1, p. 137.) Judge Komar's findings are amply supported by the record and will almost certainly be affirmed on appeal.

IV. CONCLUSION

For all of the foregoing reasons, the Court should deny Phelan's petition for a writ of supersedeas and request for an immediate stay.

Dated: February 5, 2020

PRICE, POSTEL & PARMA LLP

By: _____

Craig A. Parton
Timothy E. Metzinger
Cameron Goodman
Counsel for Respondent
Antelope Valley Watermaster

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c)(1).)

I, the undersigned appellate counsel, certify that this brief consists of 4,422 words exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft Word computer program used to prepare the brief.

Dated: February 5, 2020 PRICE, POSTEL & PARMA LLP

By: _____

Timothy E. Metzinger
Counsel for Respondent
Antelope Valley Watermaster

PROOF OF SERVICE

STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

On February 5, 2020, I served the foregoing document described as **OPPOSITION TO PETITION FOR WRIT OF SUPERSEDES AND REQUEST FOR TEMPORARY STAY** on all interested parties in this action as follows:

BY TRUEFILING (EFS): I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling portal operated by ImageSoft, Inc. Participants in the case who are registered EFS users will be served by the TrueFiling EFS system. Participants in the case who are not registered TrueFiling EFS users will be served by mail or by other means permitted by the court rules.

BY ELECTRONIC SERVICE: By posting the document(s) to the Antelope Valley Watermaster website regarding the Antelope Valley Groundwater matter with e-service to all parties listed on the website Service List. Electronic service and electronic posting completed through www.avwatermaster.org via Glotrans.

BY FEDERAL EXPRESS: I served a true and correct copy by Federal Express or other overnight delivery service, for the delivery on the next business day. Each copy was enclosed in an envelope or package designed by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown below.

Honorable Jack Komar
c/o Rowena Walker
Complex Civil Case Coordinator
Superior Court of California, County of Santa Clara
191 N. 1st Street, Departments 1 and 5
San Jose, CA 95113

June S. Ailen, Esq.
ALESHIRE & WYNDER, LLP
2361 Rosecrans Avenue, Ste. 475
El Segundo, CA 90245

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 5, 2020, at Santa Barbara, California.

Elizabeth Wright