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Refer To File #: 270273-0007

VIA ELECTRONIC MAIL

October 17, 2016

California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001
CWC@water.ca.gov

Re: **Public Comments – California Water Commission Meeting, October 18, 2016, Agenda Item No. 9, DWR’s 2016 Final Basin Boundary Modifications – 8-02.07 UPPER SANTA ANA VALLEY - YUCAIPA; 8-02.06 UPPER SANTA ANA VALLEY - BUNKER HILL; 8-02.04 UPPER SANTA ANA VALLEY - RIALTO-COLTON; 8-02.03 UPPER SANTA ANA VALLEY - RIVERSIDE-ARLINGTON**

Dear Chairman Byrne and Members of the Commission:

On July 18, 2016 Fontana Water Company and Fontana Union Water Company (collectively, “Fontana”) submitted public comments to the Commission regarding the Department of Water Resources’ (“DWR’s”) draft boundary modifications for the Rialto-Colton Basin and the Bunker Hill Basin. I am informed by DWR that no changes have been made to the proposed basin boundary modifications for these basins.

Fontana’s July 18 letter raised a number of serious concerns regarding the proposed boundary modifications. Because none of those concerns have been addressed or resolved, this letter serves to summarize and reiterate those concerns as the Commission considers DWR’s final modifications. The issues are more fully addressed in Fontana’s July 18 letter, a copy of which is attached for reference as **Exhibit “1”**.

First, it is unnecessary and counter-productive to modify the Bulletin 118 boundaries of the Rialto-Colton Basin and the Bunker Hill Basin at this time. Litigation relating to these basins—including the location of their adjudicated boundaries—is pending in San Bernardino Superior Court. The lead plaintiff in that litigation is San Bernardino Valley Municipal Water District (“Valley District”), which is the same entity pursuing the Bulletin 118 basin boundary modifications. The basin boundary modification process should not be used as a tool in that litigation, and the proposed revisions can and should wait for the results of the litigation.

Second, modifying these basin boundaries will not promote sustainable groundwater management as required by the Sustainable Groundwater Management Act (“SGMA”). (See, e.g., Water Code § 10722.2, subd. (c).) At best the proposed modifications will have little

impact on SGMA implementation, because these basins are comprised of adjudicated areas exempt from SGMA. (See Water Code § 10720.8, subds. (8), (13), (15).) At worst the proposed modifications will interfere with SGMA implementation because certain elements are at odds with SGMA, as discussed more fully in the attached letter and summarized below.

For example, the proposed new boundaries place the City of Rialto's "Chino-1" well within the SGMA-exempt Rialto-Colton Basin. The only explanation for this move is that Valley District contends it avoids the need to identify a Groundwater Sustainability Agency and prepare a Groundwater Sustainability Plan for the area where Chino-1 is located. But that is not the case. The SGMA exemption for the Rialto-Colton Basin applies "only within the area for which the adjudication action has determined" "rights to extract groundwater." (See Water Code § 10720.8, subd. (e).) Chino-1 is not within any adjudicated boundary, so merely extending the Bulletin 118 boundary of the Rialto-Colton Basin does not serve to exempt Chino-1 from SGMA. Instead this move confuses how SGMA applies to this and other non-exempt fringe areas.

Further, Valley District's request package and DWR's online mapping tools disregard an entire adjudicated area that is recognized as exempt under SGMA—the Lytle Basin. (Water Code § 10720.8, subd. (8).) The Lytle Basin adjudication is the oldest adjudication recognized by SGMA, and it is central to the pending litigation among Valley District, Fontana, and other parties. Mapping data is available for the Lytle Basin, and DWR has expressed interest in mapping it, but Valley District declined to provide mapping data to DWR. The failure to map the Lytle Basin potentially advances Valley District's litigation position in a manner inconsistent with the Lytle Basin judgments and the law.

Bulletin 118 is meant to be a technical resource, and accordingly boundary modifications should have a technical basis—or at a minimum they must promote sustainable groundwater management consistent with SGMA. The proposed modifications for the Rialto-Colton Basin and the Bunker Hill Basin do not serve either purpose. Instead they unnecessarily redefine legal boundaries that are the subject of pending litigation.

For these reasons, Fontana respectfully requests that the Commission defer action as to DWR's proposed new boundaries for the Rialto-Colton Basin and the Bunker Hill Basin until after the pending litigation is resolved.

Thank you for the opportunity to provide public comments and for the Commission's consideration of these issues.

Sincerely,



Gina R. Nicholls
for Nossaman LLP

Enclosures: Exhibit 1: Fontana's Public Comment Letter to the Commission dated July 18, 2016

cc: The Honorable Joseph Byrne, Chair
The Honorable Joe Del Bosque, Vice-Chair
The Honorable Carol Baker, Commissioner
The Honorable Andrew Ball, Commissioner
The Honorable Daniel Curtin, Commissioner
The Honorable Paula Daniels, Commissioner
The Honorable Maria Herrera, Commissioner
The Honorable David Orth, Commissioner
The Honorable Armando Quintero, Commissioner
Ms. Rachel Ballanti, Acting Executive Officer
Mr. Timothy Ross, DWR
Mr. Brian Moniz, DWR
Mr. Timothy Godwin, DWR
Mr. Timothy J. Ryan
Mr. Thomas H. McPeters

EXHIBIT “1”



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Refer To File #: 270273-0007

VIA ELECTRONIC MAIL

July 18, 2016

California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001
CWC@water.ca.gov

Re: **Public Comments – California Water Commission Meeting, July 21, 2016, Agenda Item No. 10, DWR’s 2016 Draft Basin Boundary Modifications – 8-02.07 UPPER SANTA ANA VALLEY - YUCAIPA; 8-02.06 UPPER SANTA ANA VALLEY - BUNKER HILL; 8-02.04 UPPER SANTA ANA VALLEY - RIALTO-COLTON; 8-02.03 UPPER SANTA ANA VALLEY - RIVERSIDE-ARLINGTON**

Dear Chairman Byrne and Members of the Commission:

Fontana Water Company and Fontana Union Water Company submit the following public comments on the draft approved boundary modifications for the Rialto-Colton Basin and the Bunker Hill Basin. The Department of Water Resources (“DWR”) is proposing revised boundary modifications for these two basins pursuant to the above-referenced request package that was submitted to DWR by San Bernardino Valley Municipal Water District (“Valley District”).

Fontana Water Company is a division of San Gabriel Valley Water Company, a public utility subject to the regulatory jurisdiction of the California Public Utilities Commission, which provides water utility service to a population of over 481,000. Fontana Union Water Company was formed in 1912 as a mutual water company. Fontana Water Company and Fontana Union Water Company (collectively, “Fontana”) are among the largest water rights holders and public water system operators in San Bernardino County.

I. **There Is No Need to Rush to Modify the Rialto-Colton Basin or the Bunker Hill Basin in Order to Implement SGMA.**

It is unnecessary and counter-productive for DWR and the California Water Commission (the “Commission”) to modify the Bulletin 118 boundaries of the Rialto-Colton Basin and the Bunker Hill Basin at this time. The proposed boundary modifications would have no effect on implementation of SGMA because these two basins are comprised of previously adjudicated areas, including the Rialto-Colton Basin, the Lytle Basin, and the San Bernardino Basin Area. These adjudicated areas are expressly exempt from SGMA’s sustainable groundwater management provisions. (Water Code § 10720.8, subs. (a)(8), (a)(13), (a)(15).)

It is counterproductive to update Bulletin 118 now before resolution of pending litigation relating to these basins in San Bernardino Superior Court: *San Bernardino Valley Municipal Water District et al. v. San Gabriel Valley Water Company et al.*, Case No. CIVDS 1311085. This litigation will adjudicate the scope and meaning of the very judgments that govern groundwater usage in these basins, including their boundaries. DWR's revisions to these basin boundaries should follow the results of such litigation—not precede it.

Fontana learned on July 1, 2016 that DWR worked one-on-one with Valley District to develop DWR's draft approved boundaries, which altered the original request that was made available by DWR for public comment. Even though Fontana submitted public comments, a copy of which is attached as **Exhibit "A,"**¹ Fontana was not invited to the subsequent meetings between Valley District and DWR to alter the proposed boundaries. On or about July 5, 2016 Fontana requested records regarding these one-on-one communications between DWR and Valley District, but Fontana still has not received such records.

The important issues raised by Fontana should not be decided pursuant to a hasty and truncated public participation process. Valley District's request should be denied, or deferred, until the litigation is resolved. (See Water Code §10722.2 [Water Code does not require that modifications be decided immediately]; see also Basin Boundary Regulation, §345.2.) DWR is planning to conduct another basin boundary review next year, and the final update to Bulletin 118 is not expected to be published until 2020. Thus, modifications of the Rialto-Colton Basin and the Bunker Hill Basin boundaries can and should wait until after the litigation.

II. Elements of the Proposed Modifications Are Contrary to SGMA.

Modifying the boundaries of these basins will not promote sustainable groundwater management, as required by SGMA. (See, e.g., Water Code § 10722.2, subd. (c).) Instead, doing so will interfere with the implementation of SGMA because some elements of the proposed modifications are at odds with SGMA.

A. The Chino-1 Well Cannot Be Exempted from SGMA by Moving Bulletin-118 Boundary Lines to Incorporate It Into the Rialto-Colton Basin.

The proposed new boundaries would move the City of Rialto's "Chino-1" well, which is not within any adjudicated area (and has no SGMA exemption), to the exempt Rialto-Colton Basin. Chino-1 is considered to be south of the Rialto-Colton Fault and within the hydrogeologic Chino Basin—not in the hydrogeologic Rialto-Colton Basin; nor within the adjudicated Rialto Basin as defined in the 1961 Rialto Decree (unless its boundaries are expanded in the pending litigation); nor within the adjudicated Colton Basin as defined in the Western Judgment. Further, Chino-1 is not within the City of Rialto's political boundaries or the boundaries of any other water supplier operating in the Rialto-Colton Basin.

This modification is designed to evade SGMA. At DWR's public meeting on July 14, 2016, Valley District's representative contended that the modification avoids the need to identify

¹ Exhibits to Fontana's public comment letter are omitted from Exhibit A due to their size, but they are available online through DWR's Basin Boundary Modification System (see <http://sgma.water.ca.gov/basinmod/request/comments/39>).

a Groundwater Sustainability Agency and prepare a Groundwater Sustainability Plan for the area where the Chino-1 well is located. But SGMA defines exempt areas by the applicable adjudications. (See Water Code § 10720.8, subd. (e) [SGMA exemption applies “only within the area for which the adjudication action has determined” “rights to extract groundwater”].) Merely extending the Rialto-Colton Basin’s boundary to incorporate Chino-1 does not magically exempt Chino-1 from SGMA.

Redrawing the boundaries of the Rialto-Colton Basin and the Bunker Hill Basin now would confuse, not clarify, how SGMA applies to this and any other non-exempt fringe areas that exist in or around these basins.

B. The Proposed Modifications Ignore the Adjudicated Lytle Basin, Which Is an Exempt Basin Pursuant to SGMA.

Both Valley District’s request package and DWR’s online mapping tools ignore an entire adjudicated area that is recognized as exempt under SGMA—the Lytle Basin. (Water Code § 10720.8, subd. (8).) Ignoring the Lytle Basin is a ploy to advance Valley District’s litigation position in a manner inconsistent with the Lytle Basin judgments and the law.

When Fontana commented on this issue at DWR’s July 14 public meeting, Valley District’s representative replied that the Lytle Basin is within the proposed Bunker Hill Basin, so there is no need for DWR to separately map the Lytle Basin. Shortly after that meeting, Fontana learned that DWR requested Lytle Basin boundary information from Valley District, and Valley District did not provide it. The Lytle Basin is central to the litigation involving Fontana, Valley District, and other parties. The Lytle Basin adjudication is the oldest adjudication recognized by SGMA, and the failure to map it would disregard adjudications that govern the water rights of local stakeholders.

Attached hereto as **Exhibit “B”** is a copy of the Lytle Judgment, which defines the Lytle Region including the Lytle groundwater basin. Attached hereto as **Exhibit “C”** is a map of the Lytle Basin that was published as part of Valley District’s 2012 Watermaster Annual Report, which is available online at <http://www.wmwd.com/DocumentCenter/View/2140>. Although Fontana cannot guarantee the accuracy of Watermaster’s map, it is attached to illustrate that mapping data is available for the Lytle Basin.

Bulletin 118 should not ignore and misinterpret relevant judgments, or define legal boundaries that are the subject of pending litigation.

III. Conclusion

For all these reasons, the Commission should defer action as to the draft approved boundaries for the Rialto-Colton Basin and the Bunker Hill Basin until after the pending litigation is resolved.

Thank you for the opportunity to provide public comments and for the Commission's consideration of these issues.

Sincerely,



Gina R. Nicholls
for Nossaman LLP

Enclosures: Exhibit A: Fontana Public Comment Letter to DWR
Exhibit B: Lytle Judgment
Exhibit C: Watermaster Map of Lytle Basin

cc: The Honorable Joseph Byrne, Chair
The Honorable Joe Del Bosque, Vice-Chair
The Honorable Carol Baker, Commissioner
The Honorable Andrew Ball, Commissioner
The Honorable Daniel Curtin, Commissioner
The Honorable Paula Daniels, Commissioner
The Honorable Maria Herrera, Commissioner
The Honorable David Orth, Commissioner
The Honorable Armando Quintero, Commissioner
Ms. Rachel Ballanti, Acting Executive Officer
Mr. Timothy Ross, DWR
Mr. Timothy Godwin, DWR
Mr. Timothy J. Ryan
Mr. Thomas H. McPeters

EXHIBIT “A”



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Refer To File #: 270273-0007

May 13, 2016

California Department of Water Resources
ATTN: Timothy Godwin
P.O. Box 942836
Sacramento, CA 94236

Re: **Public Comments – San Bernardino Valley Municipal Water District's Request to Modify Basin Boundaries – 8-02.07 UPPER SANTA ANA VALLEY - YUCAIPA; 8-02.06 UPPER SANTA ANA VALLEY - BUNKER HILL; 8-02.04 UPPER SANTA ANA VALLEY - RIALTO-COLTON; 8-02.03 UPPER SANTA ANA VALLEY - RIVERSIDE-ARLINGTON**

Dear Mr. Godwin:

This comment letter is submitted by Nossaman LLP on behalf of Fontana Water Company and Fontana Union Water Company in response to the request of San Bernardino Valley Municipal Water District ("Valley District") to modify the boundaries of the Yucaipa Basin, the Bunker Hill Basin, the Rialto-Colton Basin, and the Riverside-Arlington Basin. This letter raises questions and concerns about Valley District's request to modify the boundaries of the Rialto-Colton Basin and the Bunker Hill Basin,¹ and it presents difficult and indeed premature questions for the Department of Water Resources ("DWR") to consider in connection with that request.

Valley District's request with respect to the Rialto-Colton Basin and the Bunker Hill Basin (to be merged with the Lytle Basin and San Bernardino Basin Area ("SBBA") if the request is approved) comes amid active and ongoing litigation about those basins and their boundaries, led by Valley District in the San Bernardino County Superior Court. That lawsuit, bought by Valley District and three other parties, has not been brought to trial, nor is it likely to be brought to trial within the next 12 to 18 months – owing largely to massive ongoing discovery and other matters underway in that case. DWR ought to be wary of Valley District's efforts to draw DWR into Valley District's end-run around the judicial process in order to gain improper advantage and leverage in its pending lawsuit.

¹ This letter does not address Valley District's request as to the Yucaipa Basin or the Riverside-Arlington Basin, except to the extent the boundaries of these basins are defined by reference to the Bunker Hill Basin or the Rialto-Colton Basin.

The request contains insufficient information to support a finding by DWR that the proposed boundary revisions would promote “sustainable groundwater management,” as required by Section 10722.2, subdivision (a)(1) of the Sustainable Groundwater Management Act (“SGMA”) and Sections 342 and 345.2 of DWR’s Basin Boundary Emergency Regulation (“Basin Boundary Regulation”). The request does not explain how sustainable groundwater management will be better achieved if the request is granted. Valley District must clarify these issues before DWR can consider the request any further.

1. BACKGROUND

The Second Amended Complaint (“Complaint”) filed by Valley District and other plaintiffs in *San Bernardino Valley Municipal Water District et al. v. San Gabriel Valley Water Company et al.*, San Bernardino Superior Court Case No. CIVDS 1311085, asserts numerous claims regarding the SBBA, including the Lytle Basin, and the Rialto-Colton Basin. A copy of the Complaint is attached hereto as **Exhibit “A,”** and a copy of the cross-complaint filed by defendants (“Cross-Complaint”) is attached hereto as **Exhibit “B.”** The Complaint and Cross-Complaint describe various judgments and decrees pursuant to which water rights in and around these basins have been established, including the following:

- Lytle Judgment. Judgment entered in 1924 in *City of San Bernardino vs. Fontana Water Company, et al.*, San Bernardino Superior Court, Case No. 17030 and decree entered in 1897 in *Lytle Creek Water and Improvement Company v. Grapeland Irrigation District, et al.*, Los Angeles Superior Court, Case No. 20790. (See Cross-Complaint, ¶ 17.)
- Western Judgment. Judgment entered April 17, 1969 in *Western Municipal Water District of Riverside County v. East San Bernardino County Water District*, Riverside County Superior Court, Case No. 78426. (See Complaint, ¶ 75; Cross-Complaint, ¶ 75.)
- Orange County Judgment. Judgment entered April 17, 1969 in *Orange County Water District v. City of Chino et al.*, Superior Court of Orange County, Orange County Superior Court, Case No. 117628. (See Complaint, ¶ 72; Cross-Complaint, ¶ 69.)
- 1961 Rialto Decree. Court decree dated December 22, 1961 in the case *The Lytle Creek Water and Improvement Company v. Fontana Ranchos Water Company, et al.*, San Bernardino County Superior Court, Case No. 81264. (See Complaint, ¶ 35; Cross-Complaint, ¶¶ 12, 19.)

Valley District’s proposal addresses only two of these key documents, the Western Judgment and the Orange County Judgment (see DWR’s Basin Boundary Modification Request System, Valley District’s response to item G.1), to which not all the local agencies, public water systems, and/or water rights holders are parties. Valley District’s proposal ignores the other key water-related decrees and judgments, most notably the Lytle Judgment, pursuant to which water resources in the Lytle Basin have been managed for a hundred years. Valley District’s selective invocation of certain key documents and not others casts doubt on the potential

effectiveness of Valley District's plans for sustainable management of all the various hydrogeological and adjudicated sub-areas within the proposed basins.

SGMA's sustainable groundwater management provisions apply to Bulletin 118 groundwater basins (Water Code § 10721, subds. (b)-(c), § 10722), except that certain adjudicated areas are exempt. (See *id.* at § 10720.8, subd. (a).) Valley District's request seeks to modify the Bulletin 118 boundaries of the Bunker Hill Basin and the Rialto-Colton Basin. These two basins, if modified as requested, would encompass nearly all of the following adjudicated areas that are expressly exempted from SGMA's sustainable groundwater management provisions: the Lytle Basin, the Rialto-Colton Basin, and the San Bernardino Basin Area (SBBA). (See Water Code § 10720.8, subds. (a)(8), (a)(13), (a)(15); see also DWR's Basin Boundary Modification Request System, Valley District's response to item D.3, attached map entitled "SGMA Application Response D-3.pdf" [hereinafter "Valley District's Map of Proposed Boundary Modification"].)

The modified basins would merge adjudicated/exempt basins with non-exempt areas. For example, under Valley District's proposal, the Rialto-Colton Basin would incorporate a region where the City of Rialto ("Rialto") has a well that appears to be within the hydrogeological Chino Basin, but are outside the adjudicated boundaries of that basin. (See DWR's Basin Boundary Modification Request System, Valley District's response to item F.5, attached file entitled "Rialto withdraws request 3-17-16.") Besides the improper advantage and leverage Valley District may be seeking in its pending litigation, this merging of adjudicated/exempt areas with Bulletin 118 basins that are subject to SGMA is likely to generate confusion as to how sustainable groundwater management will be achieved.

2. REQUIREMENTS FOR JURISDICTIONAL MODIFICATIONS

Valley District is proposing the use of certain adjudicated, rather than scientific, basin boundaries – again, in an improper effort to gain advantages and leverage in its litigation. At the very least, Valley District must demonstrate that each "proposed adjusted basin can be the subject of sustainable groundwater management." (Water Code § 10722.2, subd. (a)(1).) But Valley District has not provided the requisite "[t]echnical information regarding the boundaries of, and conditions in, the proposed adjusted basin." (*Id.* at § 10722.2, subd. (a)(2).) Section 344.6, subdivisions (b)-(c) of the Basin Boundary Regulation further requires that Valley District provide:

"(1) An explanation of how the proposed boundary modification would promote sustainable groundwater management in the proposed basin or subbasin.

"(2) An explanation of how the proposed boundary modification would affect the ability of adjacent basins or subbasins to sustainably manage groundwater in those basins or subbasins.

"(3) A historical summary of groundwater management in the proposed basin or subbasin. . . .

"(c) Any other information deemed appropriate by the requesting agency"

Here, DWR may deny the request because Valley District is already litigating many of these issues in San Bernardino Superior Court and because Valley District has failed to show that the proposed basin modifications would promote sustainable groundwater management. (See Water Code § 10722.2, subd. (a)(1); Basin Boundary Regulation, §§ 342, 345.2.) Alternatively DWR may defer action on the request until Valley District adequately supports it. (See Basin Boundary Regulation, § 344.6, subd. (b), § 344.16, § 343.12, subd. (d).)

3. BOUNDARY MODIFICATIONS REQUESTED BY VALLEY DISTRICT

A. Bunker Hill Basin (to be renamed the San Bernardino Basin)

Valley District's proposal seeks to rename the Bunker Hill Basin the "San Bernardino Basin" and to relocate the corresponding Bulletin 118 boundaries. (See DWR's Basin Boundary Modification Request System, Valley District's response to item B.5.) The Bunker Hill Basin is a hydrogeological area that is defined by Bulletin 118 and has been designated as "high" priority by DWR. (See CASGEM Groundwater Basin Prioritization Results - Abridged, <http://www.water.ca.gov/groundwater/casgem/pdfs/lists/StatewidePriority_Abridged_05262014.pdf> [as of May 11, 2016].) The proposed San Bernardino Basin would include most of the current Bunker Hill Basin, although some portions of that basin would be excised, most notably along the northeast and southeast boundaries. (See Valley District's Map of Proposed Boundary Modification.)

The proposed San Bernardino Basin appears to be generally consistent with the SBBA, an area depicted by the map that is attached as Appendix A to the Western Judgment. The Western Judgment lacks any hydrogeological explanation for the location of the SBBA's boundaries. Thus, the boundaries of the SBBA appear to be more political or legal rather than hydrogeological in nature. Unlike the Bunker Hill Basin, the SBBA is expressly exempt from SGMA. (See Water Code § 10720.8, subd. (a).)

The proposed San Bernardino Basin incorporates the Lytle Basin (see Valley District's Map of Proposed Boundary Modification), another area that is expressly exempt from SGMA. SGMA enumerates the Lytle Basin as a separate and distinct adjudicated area from the SBBA (Water Code § 10720.8, subd. (a)), presumably because unlike other areas in the SBBA, the Lytle Basin is adjudicated under the Lytle Judgment, which allocates water rights within, and rights to export water beyond, its boundaries.

As described above, Valley District's proposal agglomerates much of the hydrogeological Bunker Hill Basin with two distinct, adjudicated/exempt areas, the SBBA and the Lytle Basin. The proposal fails to explain how the resulting San Bernardino Basin would be sustainably managed. Specifically:

- The request fails to include an explanation of which areas within the proposed basin are exempt from SGMA, which areas are not exempt, and how the requirements of SGMA would apply to the mix of adjudicated/exempt and non-exempt areas within the proposed basin. The Bunker Hill Basin is a high-priority hydrogeological area, which is subject to SGMA's sustainable groundwater management provisions. Under SGMA one or more agencies may become or form a Groundwater Sustainability Agency ("GSA") to regulate this basin, or the County of San Bernardino

will become the GSA by default. (Water Code § 10723, subd. (a), § 10724, subd. (a).) The GSA must develop and implement a Groundwater Sustainability Plan (“GSP”) for the basin. (See *id.* at § 10727 *et seq.*) In contrast, the SBBA and the Lytle Basin are adjudicated areas that are exempt from SGMA’s requirements to form a GSA and implement a GSP, and any GSA for some portions of the San Bernardino Basin presumably would have no jurisdiction over these exempt areas.

- The request fails to clarify how sustainable management of the Lytle Basin area will be achieved. Valley District’s request claims that the entire proposed basin can be sustainably managed under the Western Judgment and the Orange County Judgment—i.e., through the Western-San Bernardino Watermaster, the Santa Ana River Watermaster, and the Basin Technical Advisory Committee. (See DWR’s Basin Boundary Modification Request System, Valley District’s response to item G.1.) Valley District’s suggestion that the Western Judgment provides for groundwater management within the Lytle Basin is the subject of pending litigation, and it ignores that water resources in the Lytle Basin have been governed for a century by a separate document, the Lytle Judgment. The separateness of this area was expressly recognized by the Legislature in passing the specific exemption for the “Lytle Basin,” as distinct from the SBBA, which is an area created by the Western Judgment and recognized with its own separate exemption from SGMA. (*Compare* Water Code § 10720.8, subd. (a)(8) *with* subd. (a)(15).) For all these reasons, the Western Judgment and the Orange County Judgment likely are not effective tools for sustainable groundwater management within the Lytle Basin.
- The request fails to clearly explain how the entirety of the proposed “basin” can be sustainably managed even though it may not align with hydrogeological boundaries. The proposed San Bernardino Basin appears to be generally consistent with the SBBA, an area depicted by the map that is attached as Appendix A to the Western Judgment. But the Western Judgment lacks any hydrogeological explanation for the location of the SBBA’s boundaries; thus, the basin boundaries are more likely political or legal rather than hydrogeological.
- The request fails to clarify how the proposed basin historically has been managed. Valley District’s request inexplicably fails to mention key documents such as the Lytle Judgment. The request merely asserts in vague terms that that there is [s]ustainable groundwater management in each of these basins currently exists” and “[w]ater levels cycle up and down demonstrating that the basins are healthy. If they were not healthy, we would expect to see the storage levels trending downward.” (DWR’s Basin Boundary Modification Request System, Valley District’s responses to items G.1 and G.3.)

- Documents in support of the request show that Valley District does not know what information was used to draw the boundary of the Lytle Judgment between the proposed San Bernardino Basin and the proposed Rialto-Colton Basin. Documents in the file show that Valley District is not sure what source data or information was used to generate the boundary line for GIS mapping purposes. (See DWR's Basin Boundary Modification Request System, Valley District's response to item F.3, attached file entitled "Emails with City of Rialto Jan 2016.pdf.") Details about how the boundary line was generated should be researched and disclosed so that it can be determined whether the boundary accurately marks the border of the Lytle Basin.

B. Rialto-Colton Basin

Valley District is requesting to modify the Bulletin 118 boundaries of the Rialto-Colton Basin, enlarging it toward the south and east, but excising the Lytle Basin and other areas in the northwest. The Rialto-Colton Basin is a hydrogeological area that is defined by Bulletin 118 and has been designated as "medium" priority by DWR. Both the current and proposed versions of the Rialto-Colton Basin are much larger in area than the adjudicated boundaries of the Rialto Basin under the 1961 Rialto Decree.²

The proposed Rialto-Colton Basin appears to be similar to the Colton Basin Area, an area depicted by the map that is attached as Appendix A to the Western Judgment. However, the proposed boundary deviates from the Colton Basin Area in at least one major respect—it would incorporate a region that is located within the hydrogeological Chino Basin. (See DWR's Basin Boundary Modification Request System, Valley District's response to item F.5, attached file entitled "Rialto withdraws request 3-17-16.pdf.")

Valley District's proposal fails to adequately explain how this new Rialto-Colton Basin would be sustainably managed. Specifically:

- The request fails to include an explanation of which areas within the proposed basin are exempt from SGMA, which areas are not exempt, and how the requirements of SGMA would apply to the mix of adjudicated/exempt areas and non-exempt areas. Any GSA that may be formed to manage non-exempt portions of the Rialto-Colton Basin might not have jurisdiction over the exempt area. The extent of exempt versus non-exempt areas within the proposed new Rialto-Colton Basin is unclear.
- The request fails to explain why Lytle Basin is removed from the Rialto-Colton Basin and merged with the proposed San Bernardino Basin. The new proposed basin excises the Lytle Basin area, which is included in the Rialto-Colton Basin as currently depicted in Bulletin 118. Valley District's request would merge this region into its proposed San Bernardino Basin. (See Valley District's Map of Proposed Boundary Modification.) The request does not provide any explanation or justification for this major change to Bulletin 118.

² The 1961 Rialto Decree presumably is the basis for exempting the Rialto-Colton Basin from SGMA, even though its legal description circumscribes only a portion of the overall Rialto-Colton Basin.

- The request fails to clearly explain how the entirety of the proposed “basin” can be sustainably managed even though it straddles at least two distinct hydrogeological regions. Valley District proposes to incorporate into the Rialto-Colton Basin an area that is within the hydrogeological Chino Basin. (See DWR’s Basin Boundary Modification Request System, Valley District’s response to item F.5, attached file entitled “Rialto withdraws request 3-17-16.pdf.”) Rialto has a well in this region, which appears to be within the hydrogeological Chino Basin, but outside the adjudicated boundaries of that basin. In order to absorb Rialto’s Chino Basin well, the proposed basin must straddle at least two distinct hydrogeological regions. Valley District’s justification for this bizarre result is that it “close[s] gaps between basins and/or ensure[s] inclusion of all current agency wells and future agency wells.” (See DWR’s Basin Boundary Modification Request System, Valley District’s response to item B.3.) Valley District further asserts that a gap between the Rialto-Colton Basin and the Chino Basin “is not allowed under SGMA.” (*Id.* at Valley District’s response to item F.5, “Email to CBWM and WMWD re Rialto Decision 3-7-16”.) However, SGMA has a solution for gaps that may exist between managed basins, i.e., default management by the County. (See Water Code § 10724, subd. (a).) Valley District’s explanation does not support having the Bulletin 118 Rialto-Colton Basin encroach upon the hydrogeological Chino Basin. It does not appear that these two areas could be jointly and sustainably managed.
- The request fails to clarify how the proposed basin historically has been managed. Valley District’s request inexplicably fails to mention key documents such as the 1961 Rialto Decree. The request merely asserts in vague terms that that there is [s]ustainable groundwater management in each of these basins currently exists” and “[w]ater levels cycle up and down demonstrating that the basins are healthy. If they were not healthy, we would expect to see the storage levels trending downward.” (DWR’s Basin Boundary Modification Request System, Valley District’s responses to items G.1 and G.3.)

4. CONCLUSION

The issues discussed above call into question whether DWR can, or should, take up Valley District’s request in light of its own ongoing litigation affecting these basins, and whether the new “basins” proposed by Valley District would promote sustainable groundwater management consistent with SGMA. Valley District’s request contains only general statements and no details about how the new political/legal boundaries would promote sustainable groundwater management, particularly while the stakeholders are litigating their water rights in these basins.

Thank you for the opportunity to provide public comments and for DWR's consideration of these issues.

Sincerely,



Gina R. Nicholls
for Nossaman LLP

cc: Bob Tincher, San Bernardino Valley Municipal Water District (bobt@sbvmwd.com)
Timothy J. Ryan
Thomas H. McPeters

EXHIBIT “B”

Copy
OF
Certified Copy
OF
JUDGMENT

**Rendered in the Superior Court of San Bernardino
County, California, on January 28th, 1924,
in Action No. 17030 and Entitled:**

**“City of San Bernardino vs. Fontana
Water Co. et al.”**

**Recorded in Book 829, Page 293 of Deeds, San
Bernardino County Records**

Judgment

*In the Superior Court of the State of California
in and for the County of San Bernardino*

CITY OF SAN BERNARDINO,
a municipal corporation,

Plaintiff.

vs.

FONTANA WATER COMPANY, a corporation, FONTANA UNION WATER COMPANY, a corporation, FONTANA POWER COMPANY, a corporation, FONTANA FARMS COMPANY, a corporation, FONTANA COMPANY, a corporation, LYTLE CREEK WATER AND IMPROVEMENT COMPANY, a corporation, CITIZENS LAND AND WATER COMPANY OF BLOOMINGTON, a corporation, RIVERSIDE HIGHLAND WATER COMPANY, a corporation, RANCHERIA WATER COMPANY, a corporation, MUTUAL LAND AND WATER COMPANY OF RIALTO, a corporation, TERRACE WATER COMPANY, a corporation, THE GAGE CANAL COMPANY, a corporation, RIVERSIDE TRUST COMPANY, LIMITED, a corporation, RIVERSIDE

No.
17030

ORANGE COMPANY, LIMITED, a corporation, CITY OF COLTON, a municipal corporation, GATE CITY ICE AND PRE-COOLING COMPANY, a corporation, COLTON CITY WATER COMPANY, a corporation, MEEKS AND DALEY WATER COMPANY, a corporation, FONTANA LAND COMPANY, a corporation, JOHN-HUB WATER COMPANY, a corporation, FONTANA DEVELOPMENT COMPANY, a corporation, NORTH COLTON WATER COMPANY, a corporation, LAWSON WELL COMPANY, a corporation, ALTA VISTA WATER COMPANY, a corporation, CLARA VISTA WATER COMPANY, a corporation, ORCHARD MUTUAL WATER COMPANY, a corporation, EAST RIVERSIDE WATER COMPANY, a corporation, JAMES BARNHILL, JOHN DOE, RICHARD ROE, SAM BLACK, JOE WHITE, SAM WHITE, CHARLES WHITE, TOM BROWN, SARAH BROWN, CHARLES BROWN, MARY BROWN, CHARLES LOW and JOHN LOW, and RIALTO DOMESTIC WATER COMPANY, a corporation,

Defendants.

WHEREAS there has been filed in this action a stipulation for judgment, duly executed by and on the part of the plaintiff above named and by and on the part of each and all of the following named defendants in this action, to-wit: Fontana Water Company, a corporation;

Fontana Union Water Company, a corporation; Fontana Power Company, a corporation, Fontana Farms Company, a corporation; Fontana Land Company, a corporation, Lytle Creek Water and Improvement Company, a corporation; Citizens Land and Water Company of Bloomington, a corporation; Riverside Highland Water Company, a corporation; Rancheria Water Company, a corporation; Mutual Land and Water Company of Rialto, a corporation; Terrace Water Company, a corporation; City of Colton, a municipal corporation; Rialto Domestic Water Company, a corporation; and James Barnhill (said Barnhill being erroneously sued herein, under the name of "W. W. Barnhill"),

NOW THEREFORE, by reason of said stipulation, and pursuant to the terms and provisions thereof,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Court as follows:

I.

This action is hereby dismissed as to each and all of the defendants, other than those above named as parties to said stipulation; and each and all cross-complaints or cross-actions, filed or pending by or between any of the parties to said stipulation, above named are dismissed.

II.

As between the plaintiff and each and all of the defendants, above named, as parties to said stipulation, and as to each and all of said defendants as between themselves, excepting as set forth in Paragraph XXI hereof, it is further

ADJUDGED AND DECREED, as follows:

III.

That an inch of water, as the term is used herein, shall mean such quantity of water, in continuous flow, as will supply one-fiftieth part of a cubic foot of water per second of time.

IV.

That from time immemorial, there has flowed, and now flows, in Lytle Creek Canyon, in San Bernardino County, California, a natural stream, known as "Lytle Creek," and there exists below the mouth of said canyon, a certain pressure pipe line, belonging to said Power Company, and the cement intake diverting water into said pipe line, is situate on the west side of said stream, very near the mouth of said canyon, and at a distance of about 1662 feet north of a point in the north boundary of the Muscupiabe Rancho, between stations 48 and 49 thereof, where said boundary intersects the center line of Riverside Avenue, as delineated on the map showing subdivision of the lands of the Semi-Tropic Land and Water Company, (said location of said intake having been sometimes heretofore erroneously designated in the pleadings herein and elsewhere, as being about 2375 feet north of said point of intersection), said Map being recorded in the office of the County Recorder of said County, in Book 6 of Maps, page 12 thereof; and said Power Company, for more than five years last past, has been and now is diverting from said creek, at said intake, by means of said pipe line, the waters of said Creek, flowing at said intake not exceeding 3000 inches, and is conducting said waters to the power house of said Power Company, situated on Farm Lot 66, designated on said Map, which waters,

upon being discharged from said Power House, belong to and are distributed to sundry parties, for their use, in proportion to their rights and interests therein.

V.

That in the San Bernardino Valley in said County, there exists, and lies below, and to the southeast of the mouth of said canyon, an area of land herein designated as "Lytle Creek Region" which, for the purposes of this decree, is defined and described as follows:

Commencing at a point in the center line of Mill Street, in the City of San Bernardino, in said County, situate 300 feet east of the center line of Mt. Vernon Avenue; thence north 400 feet; thence west to the center line of Mt. Vernon Avenue; thence running north along the center line of Mt. Vernon Avenue, to the intersection thereof with the center line of Fourth Street, (said street being identical with Foothill Boulevard); thence running west along the center line of Fourth Street, to a point where the center line of Fourth Street would intersect the center line of Muscott Avenue, if said Avenue were extended south; thence running north to the point of intersection of center line of Muscott Avenue with center line of Base Line; thence running west along center line of Base Line, to the southeast corner of Section 31, Township 1 North, Range 4 West, S. B. B. & M.; thence running north to the southwesterly boundary of the right of way of Atchison, Topeka and Santa Fe Railway Company (on which right of way are located the main railroad tracks of said Railroad Company, running from said City, through Cajon Pass); thence following along said southwesterly boundary of said right of way, to the point of intersection thereof, with the State Highway

at Verdemont; thence following said Highway to the point of intersection thereof, with the north line of Township 1 North, Range 5 West, San Bernardino Base and Meridian; thence running west, along the north line of Township 1 North, Range 5 West, San Bernardino Base and Meridian, to the northwest corner of said last mentioned township; thence running southeasterly to a point situate five feet east of the most easterly point of said intake of said pipe line of said Power Company, thence running southeasterly and following upon and along a line parallel with the east side of that certain cement canal, formerly known as the "Semi-Tropic Canal" (the intake of which canal is identical with said intake of said pipe line), and at all points five feet distant in a northeasterly direction from the east side of said Canal, to a point where said line would intersect the northwesterly line of Farm Lot 68, designated on said Map, if said northwesterly line of said Lot were projected southwest; thence along said northwesterly line of said Lot, to the foot of the ridge or bluff known as the "Rialto Bench," thence running southeasterly along the foot of said bluff, to a point where the foot of said bluff intersects the center line of said Mill Street; running thence east, along the center line of Mill Street, to the place of beginning.

VI.

That whenever there shall be discharge from said Power House, surplus water in excess of the quantity at the time required to satisfy the domestic and irrigation needs of the respective parties, entitled to receive and use water discharged from said Power House, all of such surplus water, so discharged, shall be used for

replenishing the underground water sources of said Lytle Creek Region, and to that end, shall be delivered by said Power Company, to and upon the wash of said Lytle Creek, by a cement conduit, at the highest point on the westerly margin of said wash, to which such water can reasonably be conducted by gravity flow from said Power House. Such replenishment work, as to the water so delivered upon said wash, shall be performed under the supervision and direction of the Committee hereinafter mentioned.

VII.

That all water flowing at said intake of said pipe line of said Power Company, between the 15th day of December, and the 15th day of the next succeeding month of April, of each year hereafter elapsing, shall be diverted and applied in the manner and in accordance with the priorities hereinafter set forth, to-wit:

First: To supply to said pipe line 2000 inches of water, or such larger quantity as may, at the time, be required and taken for immediate use for irrigation or domestic purposes, by the parties entitled to receive and use water discharged from said Power House, not exceeding the extent of their respective rights to such water.

Second: To supply additional water to said pipe line, to the extent of an aggregate amount of 3000 inches, (inclusive of the water specified in the next preceding subdivision "First"), except and provided that all or any part of such additional water shall be allowed to flow past said intake, into the wash or channel of said creek, for replenishing the underground water of said

Region, whenever so requested in writing by the said Improvement Company, except during periods:

(a) When the quantity of water flowing in said creek at said intake, exceeds 4000 inches, in which event such excess water may be diverted through said pipe line, until the total quantity of water, diverted there-through, amounts to 2500 inches, or

(b) When the quantity of water, flowing in said creek, at said intake exceeds 5000 inches, in which event, such excess water may be diverted through said pipe line, until the total quantity of water, diverted therethrough, amounts to 3000 inches.

Third: All water, so permitted to pass said intake, shall be used, as far as reasonably practicable, for replenishing the underground water contained in the entire area of the Lytle Creek Wash, situate below said intake, provided that at all times, so far as is reasonably practicable, the upper portion of said wash shall be so replenished with water until no more water can be sunk therein, before such replenishment is performed on the portion of said wash lying south of Highland Avenue, or lying east of the west boundary of the lands in said Region now owned by the Muscoy Water Company.

Fourth: If, at the end of five years, from date hereof, said Improvement Company or their successors in interest, decide that the water producing capacity of wells, situate south of an east and west line drawn through said Power House, and north of said Highland Avenue, would be benefited and increased by conducting at said intake, into said pipe line, a quantity of water not exceeding 3000 inches, then and in that event, all of the water flowing at said intake, shall at all times

thereafter, be turned into said pipe line, to the extent of said 3000 inches, instead of permitting a portion of such waters to flow past said intake, as aforesaid, and at said Power House, all surplus water, in excess of the quantity at the time required to meet the then requirements of the respective parties, entitled to receive and use water discharged from said Power House, shall be used in accordance with, and be subject to the provisions of Paragraph VI hereof.

VII-a

That no water shall ever be conducted by any party hereto, from that certain tract of land, situated in said San Bernardino County, described as follows:

Beginning at a point on the center line of hereinbefore mentioned Muscott Avenue, said point being situate one-half mile north of said Base Line; running thence south to the center line of said Fourth Street; running thence west, along said center line of Fourth Street, to the point of intersection thereof with the center line of the right of way, for electrical transmission line, of Southern Sierras Power Company; running thence northwesterly along said center line of said right of way, to a point where said center line of said right of way would intersect a line drawn due west from said point of beginning; thence running east to said point of beginning.

VIII.

That in order to conserve, in the most economical and effectual method, all waters which, under the provisions hereof, are from time to time to be used for replenishing the underground water sources of said Region, and also, for further replenishing the underground water

supply of said Region, to conserve, so far as may be reasonably practicable, the surplus, or flood waters, of streams or canyons tributary to said Region, a committee of five persons shall annually be appointed in the month of September of each year, which committee shall have full charge and direction of such water conservation work, and of all expenditures relating thereto, provided that, in case of disagreement or difference of opinion, the power of such committee shall be exercised by concurrence of a majority of its members. One of the members of said committee shall be so appointed by said Improvement Company; one by said Citizens Company; one by said Union Water Company, one by said Mutual Company, Rancheria Water Company, Riverside Company and said City of San Bernardino; and one by said Terrace Water Company, James Barnhill and City of Colton, and each of said members shall serve for one year, and until his successor is appointed and no member of said committee shall receive any compensation for serving thereon. Vacancies on said committee shall also be filled by appointment, to be made in like manner as aforesaid, by the party or parties which made the appointment of the member whose place so becomes vacant, and any person appointed to fill such vacancies shall fill out the unexpired term of his predecessor. Subject to the provisions hereof, said committee is hereby authorized to, from time to time, install any water conservation works, including the construction of dams, ditches, cuts, obstructions, and shafts on land in said Lytle Creek Wash, lying north of Fourth Street, (said street being identical with Foothill Boulevard) and also in and along any canyon, the waters of which are tributary to said Region, and take all other steps,

as in its uncontrolled discretion may be deemed expedient, in order to accomplish the underground conservation of such waters, provided that nothing herein shall be construed as authorizing said committee to trespass upon the property or rights of any party or to do any act that would infringe upon or impair or interfere with the right of any party to the use of any water to which such party shall be entitled. The expense of installing such system and maintaining the same, and carrying on said work of water conservation, shall be borne and paid, subject to the provisions hereof, by the Fontana Companies, Citizens Company, Riverside Company, Improvement Company, Mutual Company, Rancheria Water Company, Rialto Domestic Water Company, City of Colton, City of San Bernardino, Terrace Water Company, and James Barnhill, in the same proportions that the maximum quantity of water which each of said eleven parties (or group of parties), is allotted hereunder, the right to pump from said Region, bears to the aggregate maximum quantity of water which all of said parties are allotted hereunder the right to pump from said Region, provided that in the event of any other person or corporation joining in said conservation work, and paying a proportion of the expense thereof, the proportions of said expense to be borne by said parties, as hereinbefore set forth, shall be correspondingly and equitably reduced. Said committee, in the month of October of each year, and from time to time thereafter, as they may deem proper, shall make an estimate of the amount of money at the time required to be paid to said committee by said eleven parties hereto above named, in order to meet the expense for conservation work as aforesaid, at the

time being undertaken, or in contemplation by said committee.

Said committee shall thereupon present to each of said eleven parties, a bill for the proportionate amount so to be paid by such party, and if any party shall fail to pay such bill, within thirty days after it shall be so presented to such party, then said committee may bring, and it shall be its duty to bring, suit against such party for the amount of such bill, together with costs, including a reasonable attorneys' fee to be fixed by the court in which such suit shall be brought.

Any and all lands, owned by any of said specified parties who are to bear the expense of said conservation work as aforesaid, situate in said Lytle Creek Region, and lying north of said "Fourth Street," and not suitable for the growing of crops thereon, may be used at any and all times for spreading water thereon, and sinking and conserving water therein, by means of dams, obstructions, ditches, cuts and shafts, or by taking such other steps as may be deemed expedient by said committee, provided however, that such water conservation work shall not be done in such a manner as to injure or interfere with the use of any pumping plant, structure or other improvement, situate on any land where such work is performed.

IX.

That the maximum quantity of water which said plaintiff, City of San Bernardino, shall be, and is entitled to take from said Region, and use beyond the confines thereof, is such quantity of water, which when added to the water said plaintiff is entitled to have delivered to it, from said Lytle Creek, will amount in the

aggregate, (inclusive of said Lytle Creek Water) to 325 inches of water, and said plaintiff shall not be entitled to divert, at any time, from said Region, an amount of water in excess of said 325 inches. Of said quantity of water, 225 inches and no more may be pumped or diverted from that certain tract of land in said Region, comprising 10.09 acres, and forming a part of tract known as the "McKenzie Tract" (said tract of 10.09 acres being more particularly described in that certain deed running from William L. McKenzie, and others, to said plaintiff, and recorded in Book 109 of Deeds, at page 303 thereof, in the office of the County Recorder of said San Bernardino County), and none of said 225 inches shall ever be diverted by plaintiff from any other portion of said Region.

Said plaintiff is also the owner of the right to take, divert and use water from that portion of the San Bernardino Valley, lying east of the easterly boundary line of said Lytle Creek Region and east of a line beginning at the point of intersection of the State Highway with the south boundary line of Section 34, Township 2 North, Range 5 West, S. B. B. & M., and running thence to the northwest corner of said Section 34, and north of the center line of Mill Street, extended east to Sterling Avenue, and from streams tributary to said portion of said valley, situate in said portion of said valley, either from the surface flow of such streams, or from wells bored or to be bored in said portion of said valley, to such extent as may be reasonably necessary to supply the needs of said city and its inhabitants with water for supplying needs and purposes within said City. The right of said plaintiff to take water from the surface flow of Lytle Creek, to the extent of 100 inches, shall

not be affected or diminished by any claims of the Fontana Companies, or any of them to salvage water, by reason of any water of Lytle Creek being conducted or conveyed in or through pipe lines, or conduits of any kind.

X.

That, subject to the provisions of this paragraph, the maximum quantity of water which said Rialto Domestic Water Company shall be, and is entitled to take from said Region and use beyond the confines thereof, is such quantity of water which, when added to the water said Company is entitled to have delivered to it from said Lytle Creek, will amount in the aggregate (inclusive of said Lytle Creek Water) to 143.22 inches of water, and said Company shall not be entitled to divert, at any time from said Region, an amount of water in excess of said quantity hereinbefore in this paragraph specified. Of said quantity of water, 100 inches and no more may be pumped from said Region by said Company, provided that:

(a) None of said 100 inches of water shall be taken from any well or water development situate south of a line located parallel to, and situate three-fourths of a mile north of, Highland Avenue.

(b) The right of said Company to so pump and take said one hundred inches of water, shall be exercised only to such extent as shall be necessary to supply the City of Rialto, and the inhabitants thereof, with water for municipal and domestic uses and purposes, and for the irrigation of flowers, trees and lawns, within said City, and then only during such times as the 43.22 inches of water (now supplied by said Company to the

inhabitants of said City) is inadequate, or unsuitable for such purposes or uses.

(c) None of said 100 inches of water shall, at any time, be used outside of the now, or hereafter existing corporate limits of said City of Rialto, except to the extent that said 43.22 inches is now being used outside said City.

(d) Nothing in this Paragraph X contained shall be construed as vesting in said Company the right to take any portion of said 100 inches of water from any well or water development, without the consent of the owner of the land on which such well or water development is situated.

(e) The right to pump and take said 100 inches of water from said region shall be exercised only in the event such right shall be transferred to the City of Rialto.

(f) The water derived from said 100 inches water right, other than water supplied for fire hydrants, sewers, stores and buildings, not used for dwellings, shall not be furnished to the inhabitants of said City of Rialto, except through meters and when charged for at meter rates.

XI.

That the maximum quantity of water which said Improvement Company shall be, and is entitled to take from said Region, and use beyond the confines thereof, is, such quantity of water, which when added to the water said Company is entitled to have delivered to it from said Lytle Creek, will amount in the aggregate (inclusive of said Lytle Creek Water), to 1026.23 inches, and said Improvement Company shall not be en-

titled to divert at any time, from said Region, an amount of water in excess of said quantity in this paragraph hereinbefore specified. Of said quantity of water, only 700 inches may be pumped and diverted from said Region, by said Improvement Company, except during such periods when the quantity of water said Company is deriving from said Lytle Creek, is temporarily reduced to a quantity of less than 326.23 inches, during which periods additional water may be pumped and diverted from said Region by said Company, but only to an extent sufficient to supply such deficiency of said Lytle Creek Water, and only so long as such deficiency continues. Said pumping of said 700 inches of water by said Improvement Company shall be confined to the Ferguson Ranch, (said Ranch being the real property described in that certain deed, dated November 20th, 1908, and executed by Fontana Development Company, and recorded in the office of the County Recorder of said San Bernardino County, in Book 429 of Deeds, page 103 thereof), and said Company is not entitled to pump any water from any other part of said Region.

XII.

That the maximum quantity of water, which said Mutual Company shall be, and is entitled to take and conduct from said Region, and use beyond the confines thereof, is 125 inches of water, and said Mutual Company shall not be entitled to divert at any time, from said Region, an amount of water in excess of said 125 inches, all of which said quantity of water may be pumped by said Company from said Region, but all of said water shall be taken from wells, or water de-

velopments situate south of Highland Avenue, and north of Base Line.

XIII.

That the maximum quantity of water which said Riverside Company shall be, and is entitled to take from said Region, and use beyond the confines thereof, is 450 inches of water, and said Riverside Company shall not be entitled to divert at any time, from said Region, an amount of water in excess of said 450 inches, all of which said quantity of water may be pumped or diverted by said Company from said Region, but all of said water shall be taken from wells or water developments situate south of Highland Avenue, and north of Base Line.

XIV.

That the maximum quantity of water which said Rancheria Water Company shall be, and is entitled to take from said Region, and use beyond the confines thereof, is 120 inches of water, and said Company shall not be entitled to divert at any time from said Region, an amount of water in excess of 120 inches, all of which said quantity of water may be pumped or diverted by said Company from said Region, but all of said water shall be taken from wells or water developments, situate south of Highland Avenue, and north of said Fourth Street.

XV.

That the maximum quantity of water which said Citizens Company shall be, and is entitled to take from

said Region, and use beyond the confines thereof, is 1300 inches of water, and said Citizens Company shall not be entitled to divert, at any time, from said Region, an amount of water in excess of said 1300 inches, all of which said quantity of water may be pumped or diverted by said Company from said Region, provided that:

(a) No more than 200 inches shall ever be diverted or pumped by said Citizens Company, from that part of said Ferguson Ranch specified in that certain deed, executed by the Semi-Tropic Land and Water Company, to the Rialto Irrigation District, and recorded in the office of the County Recorder of said San Bernardino County, in Book 187 of Deeds, at page 213 thereof, and

(b) No more than 585 inches shall ever be diverted from said Region by said Citizens Company, from the northeast quarter of Section 36, Township 1 North, Range 5 West, S. B. B. & M., and

(c) No more than 150 inches shall ever be diverted or pumped by said Citizens Company, from that certain tract of land, situate in said Region, described as follows, to-wit:

Commencing at a point on the Base Line two thousand and fifty feet east of the southwest corner of Township 1 North, Range 4 West, San Bernardino Base and Meridian, and running thence due east 250 feet; thence north 14 degrees west, 344 feet; thence north 24 degrees 10 minutes West, 839.7 feet; thence north 39 degrees, 56 minutes west, 1096 feet; thence due west 674 feet; thence south 8 degrees, 20 minutes east, 500 feet; thence south 34 degrees, 15 minutes east, 1119 feet; thence south 58 degrees, 35 minutes east, 998-7/10 feet, to the place of beginning.

(d) None of the remaining quantity of said 1300 inches of water shall ever be diverted or pumped by said Citizens Company, from any lands in said Region, lying to the north of Base Line, but nothing herein contained shall be construed as obligating said Citizens Company, to divert any specific quantity of water from lands lying north of Base Line, to the end that any quantity of water may be diverted by said Company, from lands in said Region lying south of Base Line, so long as such quantity, when added to the quantity of water which said Company may be then contemporaneously taking from said Region, from lands north of Base Line, shall not exceed in the aggregate, said maximum quantity of 1300 inches of water; provided however, that in the event of said Company diverting at any time from said Region, a total quantity of water, exceeding 1100 inches, then all of such excess water shall be taken by said Company from lands in said Region lying south of a line drawn parallel to, and situate 2500 feet south of Base Line.

(e) Said Citizens Company shall never be entitled to divert any water from that certain tract of land situate in said Region, and described as follows:

Beginning at the southeast corner of the northeast quarter of the northeast quarter of Section 36, Township 1 North, Range 5 West, San Bernardino Base and Meridian; running thence west, 11.89 chains to a post, thence north 3 degrees 10 minutes west, 20 chains to a post on the north line of said Section, thence east 1 chain, thence south 32 degrees east, 8.32 chains to a post; thence south 2 degrees west, 2.06 chains to a post; thence south 54 degrees east, 4.59 chains to a post; thence south 83 degrees east, 4.40 chains to the east line

of said Section, thence south 8.48 chains to the place of beginning.

XVI.

The maximum quantity of water which James Barnhill (sued herein under the erroneous name of "W. W. Barnhill"), shall be, and is entitled to take from said Region, and use beyond the confines thereof, is seventy-five inches of water and said Barnhill shall not be entitled to divert, at any time, from said Region, an amount of water in excess of said 75 inches, all of which said quantity of water may be pumped by him from said Region, but all of said water shall be taken from wells, or water developments, situate south of the existing right of way of Atchison, Topeka and Santa Fe Railway Company (on which said right of way are located the railroad tracts extending from said City of San Bernardino, to the City of Rialto), and north of said Mill Street.

XVII.

That the maximum quantity of water, which said Terrace Water Company shall be, and is entitled to take from said Region, and use beyond the confines thereof, is 150 inches of water, and said Terrace Water Company shall not be entitled to divert, at any time, from said Region, an amount of water in excess of said 150 inches, but all of said water shall be taken from wells or water developments, situate south of said right of way of said Railway Company mentioned in the next preceding paragraph hereof, and north of said Mill Street. All of said water may be pumped.

XVIII.

That the maximum quantity of water which said City of Colton shall be, and is entitled to take from said

Region, and use beyond the confines thereof, is 600 inches of water, and said City shall not be entitled to divert, at any time, from said Region, an amount of water in excess of said 600 inches, all of which said quantity of water may be pumped by said City from said Region, but all of said water shall be taken from wells or water developments situate south of the last mentioned right of way of said Railway Company, and north of said Mill Street, and none of said water shall be used west of the highway, running approximately north and south, situate on the Rialto Bench, and known as "Rancho Avenue."

XIX.

As used herein, (1) the term "Fontana Companies," refers to Fontana Water Company, Fontana Union Water Company, Fontana Power Company, Fontana Farms Company, and Fontana Land Company; (2) the term "Citizens Company" refers to the Citizens Land and Water Company of Bloomington; (3) the term "Riverside Company" refers to the Riverside Highland Water Company; (4) the term "Improvement Company" refers to the Lytle Creek Water and Improvement Company; (5) the term "Mutual Company" refers to the Mutual Land and Water Company of Rialto; (6) the term "Power Company" refers to the Fontana Power Company, and (7) the term "Union Water Company" refers to Fontana Union Water Company.

XX.

That the maximum quantity of water which said Fontana Companies shall be, and are collectively entitled to take from the surface and sub-surface waters of said Lytle Creek, and from said Lytle Creek Canyon,

and its tributaries, and from said Lytle Creek Region, and conduct from said Region, and use beyond the confines thereof, shall amount to an aggregate quantity of 3480.78 inches, and said Fontana Companies shall never be entitled either collectively or separately to divert, beyond said confines, at any time from said water sources, or any of them, an amount of water in excess of said quantity in this paragraph hereinbefore specified. Of said 3480.78 inches of water, 1300 inches and no more may be pumped and diverted from said Region, by said Fontana Companies, provided that:

(a) No more than three hundred inches shall ever be pumped from the next hereinafter described tract of land, and said 300 inches shall be pumped from no other place; said tract being that certain tract, in said Region, described as follows:

That portion of the Southwest portion of the Muscupiabe Rancho, described as follows:

Beginning at station O of the north boundary of the Muscupiabe Rancho, which point is situate near the northeasterly bank of Lytle Creek, and near the mouth of Lytle Creek Canyon;

Thence following and along the northerly boundary of said Muscupiabe Ranch, South 67 degrees, 52 minutes East, thirty-five and fifty-three hundredths (35.53) chains to station 1 of said Muscupiabe Rancho; thence south 48 degrees, 14 minutes west, fifty-six and seventy-six hundredths (56.76) chains to the southwesterly corner of Farm Lot Ten (10) designated on the Map showing SUBDIVISION OF LANDS BELONGING TO SEMI-TROPIC LAND AND WATER COMPANY, recorded in Book 6 of Maps, at page 12, in the office of the County Recorder of said San Bernardino County;

Thence north 24 degrees, 43 minutes west, eighty-four and twenty-four hundredths (84.24) chains to a point in the north boundary of said Muscupiabe Rancho; said point being identical with the north corner of Farm Lot One (1), designated on said Map; thence, following and along the north boundary of the Muscupiabe Ranch, south fifty-one degrees, thirty minutes east, eleven and fifty-hundredths (11.50) chains to Station 49 thereof;

Thence, south 63 degrees, 00 minutes east, 40 chains to Station 0 of said Muscupiabe Rancho, the place of beginning.

Containing two hundred twelve and nineteen hundredths (212.19) acres.

(b) No more than 200 inches shall ever be pumped and diverted from said Region, from that certain tract of land in said Region, described as follows:

Commencing at a point on Line 2-3 of the northeasterly boundary of the southwest portion of the Rancho Muscupiabe, said point being north 45 degrees, 0 minutes west, one hundred thirty-seven and three-tenths chains from the southeast corner of Section 25, Township 1 North, Range 5 West, San Bernardino Base and Meridian; thence following the northeasterly boundary line of lands heretofore conveyed by the Fontana Development Company, to the Lytle Creek Water and Improvement Company, by deed recorded in Book 429 of Deeds, page 103, south 71 degrees, 13 minutes west, thirty-four and twenty-eight hundredths chains; thence still following said boundary north eighty-two degrees, fifty-nine minutes west, eighteen and seventy-three hundredths chains, for a point of beginning; thence from said point of beginning north fifty-four degrees,

fifteen minutes west, eighty-three and four hundredths chains; thence south 35 degrees, 45 minutes west, along the boundary line of the land conveyed by the Fontana Development Company to the Fontana Union Water Company, by deed recorded in Book 505 of Deeds, page 274, to the northwesterly corner of Lot 64, of Map showing subdivision of lands belonging to the Semi-Tropic Land and Water Company, as per plat recorded in Book 6 of Maps, page 12, of the records of said County, including the western portion of the Muscupiabe Grant, as per plat recorded in Book 7 of Maps, page 23, of the records of said County; thence from said northwesterly corner of said Lot 64, easterly and along the northeast line of Lots 64, 66, 68, 70, 72, 74 and 76, to the westerly point of land conveyed by the Fontana Development Company to the Lytle Creek Water and Improvement Company, by deed recorded in Book 429 of Deeds, page 103, et. seq.; thence following the north boundary of said tract south 82 degrees, 59 minutes east, twenty-six and twenty-seven hundredths chains, more or less, to point of beginning.

(c) None of the remaining 800 inches, or any portion of said 1300 inches of water, shall ever be pumped by said Fontana Companies, or any of them, from any portion of said Region lying to the south, or southeasterly of a line drawn from the southeast corner of Farm Lot 68, designated on said Map, to that certain point situate on the boundary of said Muscupiabe Rancho, designated or known as "Stake No. 3" (which said last mentioned point is situate very near to the northeast corner of Section 22, Township 1 North, Range 5 west, S. B. B. & M.); thence running due east to the southwesterly boundary of said right of way of

said Atchison, Topeka and Santa Fe Railway Company, hereinbefore mentioned, save and except that 150 inches of said 1300 inches of water may be pumped or diverted from lands in said Region lying below or to the south or southeasterly of said line.

(d) No water, pumped in said Region by any of said Fontana Companies, shall ever be conducted east of the west boundary of the lands in said Region now owned by the Muscoy Water Company, a corporation, provided however, that if any of the said Fontana Companies shall exercise the right to substitute for 150 inches of the surface waters of said Lytle Creek other water (said right being specifically provided for in that certain judgment rendered by the Superior Court of said San Bernardino County, in Action numbered 9383 in said Court, a copy of which judgment is recorded in the office of the County Recorder of said County, in Book 369 of Deeds at page 323 thereof, which said judgment is based upon that certain contract, dated October 26, 1891, wherein John L. Campbell granted to the Semi-Tropic Land and Water Company, the right to make such substitution of such water), then and in that event, such substituted water, not exceeding 150 inches, may be conducted anywhere.

(e) No water, except the 300 inches permitted to be pumped hereunder, from the tract of land described in Subdivision (a) of this Paragraph XX, shall ever be pumped and diverted by any of said Fontana Companies, from said Region, except and provided that whenever the quantity of water which said Fontana Companies are deriving from said Lytle Creek, at said intake, when added to any water that shall at the time be actually pumped from said tract (there shall be no

obligation to pump any water from said tract), shall amount in the aggregate to less than 2500 inches, then, so long as such deficiency shall continue, said Fontana Companies may take and divert from said Region from any or all of said other areas hereinbefore specified (but not more from any one of said areas than the maximum that they are entitled to take from such tract as hereinbefore stated) such quantity of water as may be necessary to make up such deficiency and maintain such aggregate supply of 2500 inches.

(f) Said quantity of 2500 inches and said maximum quantity of 3480.78 inches of water, hereinbefore referred to in this Paragraph XX, both relate exclusively to water which said Fontana Companies are entitled to take for their own use for irrigation and other beneficial purposes, beyond the confines of said Region.

XXI.

Nothing herein contained shall settle, bind or affect any question, matter or right existing between any of said Fontana Companies only, the purpose of this decree being to define and adjudicate the rights involved herein, of each and all of the respective parties hereto, other than said Fontana Companies, and also to adjudicate the collective rights of all of said Fontana Companies, constituting one group of defendants, without affecting any right which any of said Fontana Companies may have against any other of said Fontana Companies.

XXII.

That, except as provided in Paragraph XXIV hereof, no well shall ever be sunk hereafter by any party to

this action, within a distance of 200 feet of the north boundary line of said Ferguson Ranch, and it is further decreed that none of said Fontana Companies shall be entitled to hereafter pump any water in said Lytle Creek Canyon, at any time when such water is not needed for irrigation purposes.

XXIII.

Nothing contained herein shall be construed as permitting or shall permit, any water to be diverted from said Region, or from any water sources herein mentioned, at any time when the water so diverted is not reasonably needed for some useful or beneficial purpose, and it shall not be deemed a useful or beneficial purpose within the meaning of this paragraph, to use water:

(a) For irrigating, between the 15th day of November and the 15th day of March, of the next succeeding year, any grain or cereal crop, unless such crop is growing in an orchard;

(b) For saturating or causing water to sink in lands, lying outside of the said Region and canyon, for the purpose of accomplishing underground storing of water, or of adding to the water contained in such lands, nor for exercising unreasonable irrigation of crops or trees growing thereon.

XXIV.

That none of the parties to this action shall ever be entitled hereafter, to sink any well within a distance of 500 feet from any other well, owned, or operated by any other party to this action, except for substituting a new well in lieu of any now existing well, within said distance, for the sole purpose of maintaining, but not in-

creasing, the quantity of water now taken by such existing well, within such distance, provided however, that if it is desired to sink such new well within said distance, then such new well shall be always located as near as reasonably practicable to the existing old well for which it is to be substituted, as aforesaid.

XXV.

That each and all of the parties to this action, when taking any water from any water source mentioned herein, shall install, and at all times maintain respectively, at every point at which such water is so taken, such measuring box or weir or other measuring device, as will show readily and accurately the quantity of water at the time being taken at such point, which box and weir or other device, shall be installed and maintained as directed by, and to the satisfaction of said committee on water conservation, and shall at all times be open to inspection by an member of said committee, and by any party to this action.

XXVI.

Nothing herein contained shall be construed as vesting any new right in any of the parties hereto, to enter upon and take water from any water development or well situate on any property of any other party hereto, but the provisions of this paragraph shall not impair or affect any existing right of any party hereto.

XXVII.

That the rights of each and all of the said parties to pump water from said Region, as hereinbefore specified and defined are, as between said parties, equal and cor-

relative, without any priority or superiority of right, except as hereinbefore specifically stated or provided as to a particular interest or right, as between particular specified parties.

XXVIII.

That every provision of this decree in favor of, or applying to any party hereto, shall also apply to, and inure to the benefit of, and also bind each and all of the heirs, legal representatives, successors and assigns of such party.

XXIX.

That nothing herein decreed shall impair, abridge, or affect any existing right of any party hereto, which is now established by decree of court, or by other record, to have delivered, or to share in water from the surface flow of said Lytle Creek, except as may hereinbefore be otherwise specifically provided. Nothing herein decreed shall impair, abridge or affect any existing right of any party hereto to practice water conservation by sinking water in said Lytle Creek Canyon.

XXX.

That each and all of the parties hereto, and the agents and employees of each of them, are hereby perpetually restrained and enjoined from doing any act or thing in violation of the provisions of this decree.

XXXI.

None of the several maximum quantities of water which the parties hereto are respectively entitled to take from said Region, and use beyond the confines thereof, as herein specified, shall be increased or affected by the

future acquiring of additional lands in said Region by any of said parties; provided, however, anything to the contrary herein contained notwithstanding, should any party hereto hereafter purchase from any other party hereto the herein specified right to divert water of such other party, such purchasing party shall be entitled to exercise such purchased right of diverting water from said Region, in addition to the right allotted hereunder to such purchasing party.

XXXII.

No objection shall ever be made by any of said parties as to the interest or right of any party, as hereinbefore specified and defined, or as to the validity of this judgment in so specifying or defining such interest or right, on the ground that such interest or right, as so specified or defined, is not consistent with or warranted by the pleadings relative thereto; and if, in any case, it shall appear that any such interest or right, as so specified and defined, is in fact not consistent with or warranted by such pleading as actually filed, then such pleading shall be deemed and treated as amended, to conform to and sustain such interest and right as hereinbefore specified and defined.

XXXIII.

Each of said parties waives all right of appeal from this judgment, and no appeal shall be taken by any party or parties from this judgment or any part thereof.

XXXIV.

No party to this judgment shall be entitled to recover costs from any other party.

Dated: January 28th, 1924.

BENJAMIN F. WARMER,
Judge.

Endorsed:
Filed Jan. 28, 1924

HARRY L. ALLISON, Clerk
By M. L. ALDRIDGE, Deputy.

Docketed: Jan. 30, 1924, at 1:35 o'clock P. M.

Entered: Jan. 28, 1924, Book 41, Page 154.

HARRY L. ALLISON, Clerk
By R. M. SCHMIDT, Deputy Clerk

STATE OF CALIFORNIA, }
COUNTY OF SAN BERNARDINO, } ss.

I, HARRY L. ALLISON, County Clerk and ex-officio Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original on file in my office.

Witness my hand and seal of the Superior Court, this 14th day of Feb., 1924.

HARRY L. ALLISON, County Clerk.
By R. M. SCHMIDT, Deputy.

Recorded at request of Leonard, Surr & Hellyer, Feb. 16, 1924, at 28 minutes past 9.00 A. M., in Book 829, Page 293, of Deeds, Records San Bernardino County.

FULTON G. FERAUD, County Recorder.
By IRENE McINERNEY, Deputy Recorder.
Fee \$13.50.

I hereby certify that I have correctly transcribed this instrument on the records in the office of the Recorder of San Bernardino County.

R. EASTON, Copyist.

Compared:

M. ALEXANDER,—R. EASTON.

EXHIBIT “C”

**WESTERN - SAN BERNARDINO WATERMASTER
FOR**

WESTERN MUNICIPAL WATER DISTRICT et al.

vs.

EAST SAN BERNARDINO COUNTY WATER DISTRICT et al.

CASE NO. 78426 - COUNTY OF RIVERSIDE

VOLUME 1 - 2012

**VERIFIED EXTRACTIONS FROM THE
SAN BERNARDINO BASIN AREA**

FOR

CALENDAR YEARS 1959-1963 & 2008-2012

By Non-Plaintiffs For Use Within San Bernardino County

**ANNUAL ACCOUNTING
FOR INDIVIDUAL WELLS**

April 1, 2014

WATERMASTER

*Douglas D. Headrick
John V. Rossi*

SAN BERNARDINO BASIN AREA VOLUME 1

Legend

-  San Bernardino Basin Area
-  Table 1&2 Active Well (>0 production)
-  Table 1&2 Inactive Well (no production)
-  Major Road
-  Freeway
-  County Line
-  River

0 2 4 Miles

Map Document: \\GIS\workspace\2009\090410_WesternSanBernardinoMap.aprx
SanBernardinoBasinArea\01.mxd 3/10/2010 - 4:35:11 PM

