

1 JAMES B. GILPIN, Bar No. 151466
james.gilpin@bbklaw.com
2 STEVE M. ANDERSON, Bar No. 186700
steve.anderson@bbklaw.com
3 SARAH CHRISTOPHER FOLEY, Bar No. 277223
sarah.foley@bbklaw.com
4 BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
5 San Diego, California 92101
Telephone: (619) 525-1300
6 Facsimile: (619) 233-6118
Attorneys for Plaintiff
7 BORRÉGO WATER DISTRICT

EXEMPT FROM FILING FEES PURSUANT
TO GOVERNMENT CODE SECTION 6103

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 Borrego Water District,
12
13 Plaintiff,

Case No. 37-2020-00005776
Judge: Peter J. Wilson
Dept: CX102

14 v.

**DECLARATION OF JAMES B. GILPIN
IN SUPPORT OF MOTION FOR
ENTRY OF STIPULATED JUDGMENT
AND ORDER OF FINANCIAL
REIMBURSEMENT, OR
ALTERNATIVELY FOR
PRELIMINARY INJUNCTION**

15 ALL PERSONS WHO CLAIM A RIGHT TO
EXTRACT GROUNDWATER IN THE
BORREGO VALLEY GROUNDWATER
16 SUBBASIN NO. 7.024-01 WHETHER BASED
ON APPROPRIATION, OVERLYING RIGHT,
17 OR OTHER BASIS OF RIGHT, AND/OR
WHO CLAIM A RIGHT TO USE OF
18 STORAGE SPACE IN THE SUBBASIN; et al.,

Date: April 8, 2021
Time: 2:00 p.m.

19 Defendant.

Complaint filed: January 30, 2020

Trial Date: None Set

1 I, James B. Gilpin, declare as follows:

2 1. I am an attorney at law duly licensed to practice before all courts in the State of
3 California. I am a partner at Best Best & Krieger, LLP, attorneys of record for Plaintiff Borrego
4 Water District (“BWD” or “District”) and this declaration is made in support of the Joint Motion
5 For Entry Of Stipulated Judgment And Order Of Financial Reimbursement, Or Alternatively For
6 Preliminary Injunction (“Motion”). I have personal knowledge of the facts set forth below,
7 except those stated on information and belief, and if called to testify, I would and could testify
8 competently to the same.

9 2. On or about January 30, 2020, BWD filed the underlying comprehensive
10 adjudication pursuant to Title 10, Chapter 7 of the California Code of Civil Procedure (Sections
11 830, et seq.) to determine all rights to extract (aka pump) groundwater in the Borrego Basin,
12 whether based on appropriation, overlying right, or other basis of right, and all rights to use of
13 storage space in the Basin; to issue a preliminary injunction pursuant to section 847 of the Code
14 of Civil Procedure, to impose a physical solution pursuant to section 849 of the Code of Civil
15 Procedure; and to enter judgment based upon the criteria set forth in section 850 of the Code of
16 Civil Procedure (the “Adjudication”).

17 3. Prior to filing the Adjudication, BWD and a majority of the groundwater extractors
18 in the Basin entered into a written settlement agreement to establish the terms and process for
19 stipulation to a judgment that comprehensively determines and adjudicates all rights to extract
20 and store groundwater in the Basin and that establishes a physical solution for the Sustainable
21 Groundwater Management for the Basin and complies with Article X, section 2 of the California
22 Constitution.”

23 4. As part of the original settlement agreement, the settling parties agreed to entry of
24 Judgment in the form attached to the Settlement Agreement and to be bound by and operate under
25 the provisions of the Judgment on an interim basis pending entry of the Judgment.

26 5. The Judgment identified and assigned Baseline Pumping Allocations (“BPA”) to
27 identified persons and the legal parcel(s) to which the BPA attached and the wells to which the
28 BPA was assigned. All persons to whom BPA was assigned in the Judgment were named as

1 Defendants in the Complaint (“Named Defendants”).

2 6. BWD and some of the Named Defendants (“Stipulating Parties”) entered into a
3 First Amendment of the Settlement Agreement. A copy of the First Amendment to the
4 Settlement Agreement (“First Amendment”) and the Settlement Agreement, as amended by the
5 First Amendment to the Settlement Agreement (“Settlement Agreement”) are attached as Exhibit
6 “D” and Exhibit “C” to the Notice of Lodgment.

7 7. Pursuant to the terms of the Settlement Agreement and First Amendment, BWD
8 and some of the Named Defendants agreed to submit the proposed Stipulated Judgment, attached
9 as Exhibit “B” to the Notice of Lodgment, to the Court for entry of judgment pursuant to section
10 850 of the Code of Civil Procedure (the “proposed Stipulated Judgment”).

11 8. The Complaint also named “ALL PERSONS WHO CLAIM A RIGHT TO
12 EXTRACT GROUNDWATER IN THE BORREGO VALLEY GROUNDWATER SUBBASIN
13 NO. 7.024-01 WHETHER BASED ON APPROPRIATION, OVERLYING RIGHT, OR OTHER
14 BASIS OF RIGHT, AND/OR WHO CLAIM A RIGHT TO USE OF STORAGE SPACE IN
15 THE SUBBASIN.”

16 9. Following filing of the Adjudication, pursuant to Section 836 of the Code of Civil
17 Procedure, BWD lodged with the Court a draft Notice titled “NOTICE OF COMMENCEMENT
18 OF GROUNDWATER BASIN ADJUDICATION” and draft Form Answer titled “ANSWER TO
19 ADJUDICATION COMPLAINT.” Copies of the draft Notice and draft Form Answer were
20 posted and are available at <http://www.borregowd.org/judgment> and
21 <http://borregowaterlawsuit.com>.

22 10. The Court approved service of the approved Notice and Form Answer in
23 accordance with section 836 of the Code of Civil Procedure as a substitute for the summons
24 otherwise provided for in Civil Actions pursuant to section 412.20 of the Code of Civil
25 Procedure.

26 11. BWD provided notice of this adjudication to all holders of fee title to real property
27 in the groundwater Basin (“Overlying Landowners”) pursuant to Code of Civil Procedure Section
28 836(d)(1), either by certified mail return receipt requested or by physically posting notice on

1 properties for which it did not obtain a return receipt. BWD filed a notice of completion of this
2 mailing and posting process, pursuant to Code of Civil Procedure Section 836(e), with supporting
3 declarations, on December 29, 2020. Pursuant to subdivision (k) of Section 836, it was “the duty
4 of all claimants interested in the proceedings and having notice of the proceedings pursuant to this
5 chapter to appear in the proceedings and to submit proof of their claims at the time, and in the
6 manner, required by this chapter.” The following persons, including trusts, appeared in response
7 to the Section 836 Notice: Eric Nessa, Nessa Rice & Nicole Trust 5-23-19; Bruce A. and Mary A.
8 Anderson, Anderson Family Trust 4-6-98, Mary Janet Johnson and Janet Johnson Revocable
9 Trust 11-10-16, Leibert David G. and Wood Cynthia A. Trust, Cary D. Lowe (Butler-Lowe
10 Family Trust 01-11-08), Michael A. Aguiar; Charles S. and Patricia Smith, Trustees of Charles
11 and Patricia Smith Trust, Declaration of Trust Dated 1-23-12; Marilee Hawkins Cherry and
12 Donald Hawkins; Murdia Rogers; Jamie Jo Lewis; BHLC, LLC; Natalie J. Ginsburg; Provident
13 Trust Group LLC FBO Judith A. Nelson 401k ; Hayden I. and Sherry R. Dubay; Westcore
14 Borrego, LLC; Patrick Spreter; and Mathes Family Limited Partnership.

15 12. In lieu of filing the Form Answer approved by the Court and as allowed by order
16 of the Court at the November 20, 2020 Status Conference, the following Defendants elected to
17 file a Stipulated Appearance for Entry of the Proposed Stipulated Judgment: Monica Real Estate
18 Holdings L.P., The Roadrunner Club at Borrego, LP, The Springs RV and Golf Resort, LP; Lance
19 Lundberg, Trustee of the Lundberg Family Trust 10-01-98; Bagdasarian Farms LLC; and Borrego
20 Springs Unified School District. Copies of the Stipulated Appearances are attached to the Notice
21 of Lodgment as Exhibit “E” and are being submitted to the Court on behalf of the Stipulating
22 Parties for filing.

23 13. To date, 48 parties have appeared in the case, only 27 of which have been
24 identified as groundwater extractors in the Basin (see below).

25 14. For the Named Defendants who have not appeared, notices for entry of default are
26 being prepared to be filed with the Court in advance of the hearing. The following is a list of
27 Named Defendants who have been served, but have not appeared, and for whom notice of default
28 are being filed: Agri-Empire; Alan and Tracy Asche; Gary D. and Darlis A. Bailey; Brian Siefker,

1 Trustee of the Brian Siefker Trust 12-18-01; Joel Vanasdlen; John B. and Silvia H. Hogan; Jose
2 G. and Maria E. Sanchez; Manuel and Araceli Navarro; Ronald Pecoff; and the Wright Family
3 Living Trust 06-19-89. Doug and Patricia Munson; Gabriel Wisdom, Trustee of the Wisdom
4 Gabriel B&Weis Wisdom Diana Family 2009 Trust 08-01-08; Genus, L.P.; Max Siefker; Michael
5 Maiter and John Savittieri; Rick and Joan Anson, Co-Trustees of the Anson Family Trust 08-18-
6 08; and Robert Larkins.

7 15. BWD has retained Trey Driscoll as an expert to review groundwater extractions in
8 the Borrego Valley Groundwater Basin. As part of his work, Mr. Driscoll identified the
9 groundwater extractors in the Basin (“Groundwater Extractors”) and the total volumes of
10 groundwater pumped by each Groundwater Extractor, and specified those pumping more than
11 two acre feet per year from the Basin during the years 2014 to 2019. Those Groundwater
12 Extractors are identified in Exhibit A attached to his declaration and as Exhibit A to the Notice of
13 Lodgment. In addition, of the Overlying Landowners who have appeared in the Adjudication,
14 Mr. Driscoll identified Charles S. and Patricia Smith, Trustees of Charles and Patricia Smith
15 Trust, Declaration of Trust Dated 1-23-12 and the Mathes Family Limited Partnership as persons
16 who extracted groundwater between 2015 and 2019. (Driscoll Decl., pp. 10-11, ¶ 42.)

17 16. Of the Groundwater Extractors identified by Mr. Driscoll, 27 have appeared as
18 parties in the Adjudication (“Extracting Parties”). Of those Extracting Parties, 18 have agreed to
19 support the proposed Stipulated Judgment. Accordingly, the proposed Stipulated Judgment is
20 supported by more than 50 percent of all parties who are Groundwater Extractors in the basin. A
21 list identifying the appearing parties and whether they are Groundwater Extractors and Stipulating
22 Parties is attached as Exhibit “F” to the Notice of Lodgment.


23 17. Based upon the total volumes of groundwater pumped by each groundwater
24 extractor pumping more than two acre feet per year from the Basin during the years 2015 to 2019
25 as shown in Exhibit A, the Stipulating Parties are responsible for at least 75 percent of the
26 groundwater extracted in the Basin during the five calendar years before the filing of the
27 Complaint.

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

Executed this 12th day of March 2021 at San Diego, California.



JAMES B. GILPIN