

FILED
KERN COUNTY SUPERIOR COURT
6/8/2021

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12 [ADDITIONAL COUNSEL ON NEXT PAGE]

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF KERN

15 CLEAN WATER FUND and ASSOCIATION
16 OF IRRITATED RESIDENTS,

17 Plaintiffs,

18 v.

19 VALLEY WATER MANAGEMENT
COMPANY,

20 Defendant.

21 CLEAN WATER FUND and ASSOCIATION
22 OF IRRITATED RESIDENTS,

23 Plaintiffs,

24 v.

25 SENTINEL PEAK RESOURCES LLC;
26 SENTINEL PEAK RESOURCES
CALIFORNIA LLC; DOES 1-20, inclusive,

27 Defendants

CASE NO.: BCV-19-101750, DRL
Consolidated with Case No. BCV-19-102368

*Assigned to Hon. David R. Lampe
for All Purposes*

28 STIPULATED CONSENT JUDGMENT

Trial: May 24, 2021
Actions Filed: June 24, 2019; August 22, 2019

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20 Attorneys for Plaintiffs
21 Clean Water Fund and Association of Irrigated Residents
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1 **1. INTRODUCTION**

2 **1.1.** This Stipulated Consent Judgment (“Consent Judgment”) is entered into by
3 Plaintiffs Clean Water Fund, and Association of Irrigated Residents (collectively, “Plaintiffs”);
4 Sentinel Peak Resources LLC, and Sentinel Peak Resources California LLC (collectively, the
5 “SPR Defendants”); and Valley Water Management Company (“Valley Water” and, collectively
6 with the SPR Defendants, the “Settling Defendants”) to settle claims asserted by Plaintiffs against
7 Settling Defendants as set forth in the operative Complaints in the consolidated matter *Clean*
8 *Water Fund v. Valley Water Management Company, et al.*, Kern County Superior Court Case
9 Nos. BCV-19-101750, BCV-19-102368 (the “Action”). Plaintiffs and Settling Defendants are
10 referred to collectively as the “Parties.” This Consent Judgment’s “Effective Date” is the date
11 that the Court has approved this Consent Judgment and Plaintiffs have provided notice to the
12 Settling Defendants that the Court has entered it in the Court’s records as a consent judgment.

13 **1.2.** On or about April 15, 2019, Plaintiffs served their initial 60-Day Notice of
14 Violation relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986,
15 California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Valley Water and the
16 District Attorney for the County of Kern.

17 **1.3.** On June 7, 2019, the Central Valley Regional Water Quality Control Board
18 (“Regional Board”) issued Cease and Desist Order No. R5-2019-0045 (“Order”) for the Facilities.
19 The Order requires Valley Water to take certain actions and/or cease discharges from the
20 Facilities by September 1, 2021 (the “Order Compliance Deadline”).

21 **1.4.** On or about June 10, 2019, Plaintiffs served their initial Prop 65 60-Day Notice of
22 Violation (collectively with the above-referenced April 15, 2019 60-Day Notice of Violation, the
23 “Notices”) on the SPR Defendants and the District Attorney for the County of Kern.

24 **1.5.** The Notices each allege certain violations of Proposition 65 with respect to alleged
25 discharges of produced water containing Proposition 65-listed chemicals¹ to Valley Water’s

26 ¹ The Notices allege that the Settling Defendants discharge the following Proposition 65-listed
27 chemicals, which are at issue in the Action: 1,4-Dioxane; Arsenic; Benzene; Bromoform;
28 Cumene; Diethanolamine; Ethylbenzene; Ethylene Glycol; Methanol; Naphthalene; Nickel;

1 facilities, consisting of approximately 80 cleaning, passthrough, evaporation, and percolation
2 ponds located in or near the Cymric Area and Belgian Anticline and McKittrick Oil Fields, near
3 the city of McKittrick in Kern County, California. The Valley Water facilities are known as the
4 McKittrick 1 and McKittrick 1-3, and are referred to herein as the “Facilities.”

5 **1.6.** On June 24, 2019, Plaintiffs filed the original complaint in the Action (Case No.
6 BCV-19-101750), naming Valley Water a defendant therein.

7 **1.7.** On August 22, 2019, Plaintiffs filed their complaint against the SPR Defendants
8 (Case No. BCV-19-102368).

9 **1.8.** On July 21, 2020, Plaintiffs’ cases against Valley Water (Case No. BCV-19-
10 101750) and the SPR Defendants (Case No. BCV-19-102368) were consolidated into the Action.

11 **1.9.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
12 Court has jurisdiction over the allegations of violations contained in the Notices and Complaints
13 and personal jurisdiction over Settling Defendants as to the acts alleged in the Complaints; (ii)
14 venue is proper in the County of Kern; (iii) this Court has jurisdiction to enter this Consent
15 Judgment as a full and final resolution of all claims that were or could have been raised in the
16 Action based on the facts alleged in the Notices and Complaints with respect to alleged
17 discharges to a source of drinking water from the Facilities; and (iv) the Settling Defendants
18 constitute a “person in the course of doing business” under Proposition 65.

19 **1.10.** This Consent Judgment resolves claims that are denied and disputed. The Parties
20 enter into this Consent Judgment as a full and final settlement of all claims that were or could
21 have been raised in the Action arising out of the facts or conduct related to Settling Defendants
22 alleged therein, solely for the purpose of avoiding prolonged, costly litigation. By execution of
23 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact,
24 conclusion of law, or violation of law, nor shall compliance with the Consent Judgment constitute
25 or be construed as an admission by the Parties of any fact, conclusion of law, or violation of law.

26 _____
27 Radionuclides; Residual (Heavy) Fuel Oils; Toluene; and Trisodium Nitrilotriacetic Acid
28 (collectively, the “Subject Chemicals”).

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1 Settling Defendants deny each and every material, factual, and legal allegations in the Notices
2 and the Action, and expressly maintain that they have at all times complied with all applicable
3 laws and regulations including but not limited to Proposition 65. Except as specifically provided
4 herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
5 argument, or defense any of the Parties may have in this or any other pending or future legal
6 proceedings.

7 **2. INJUNCTIVE RELIEF**

8 **2.1. Cessation of Discharges.** The Settling Defendants agree to cease discharges of
9 the Subject Chemicals, from the Facilities, on or before September 1, 2021. However, the
10 September 1, 2021 deadline shall be extended to be consistent with any amended, superseding, or
11 different Order Compliance Deadline(s) permitted, allowed, or ordered by the Regional Board
12 such that the deadline for cessation of discharges required hereunder is consistent with such
13 amended, superseding, or different Order Compliance Deadline(s). In no event, however, shall
14 the Compliance Deadline be extended beyond September 1, 2022. Upon timely satisfaction of
15 the requirements of this provision, the SPR Defendants and Valley Water shall each provide
16 written notice to Plaintiffs that the requirements of this provision have been timely satisfied.

17 **3. PAYMENTS**

18 **3.1** Settling Defendants shall pay to Plaintiffs the total sum of \$645,000, which shall
19 be allocated as follows:

20 **3.1.1** \$139,000 as a civil penalty pursuant to California Health & Safety
21 Code § 25249.7(b), such money to be apportioned by Plaintiffs in accordance with California
22 Health & Safety Code § 25249.12 (25% (\$34,750) to Plaintiffs and 75% (\$104,250) to the State
23 of California’s Office of Environmental Health Hazard Assessment).

24 **3.1.2** \$481,000 as a reimbursement of Plaintiffs’ reasonable attorneys’ and
25 experts’ fees and costs.

26 **3.1.3** \$25,000 to Clean Water Fund (“CWF”) as an Additional Settlement
27 Payment (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203,

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1 subdivision (d), and 3204. CWF will utilize the ASP for activities that address the same or
2 similar public harm as allegedly caused by Settling Defendants in this matter. CWF's activities
3 have had, and will continue to have, a direct and primary effect within the State of California, as
4 California water users will benefit from the reduction and/or elimination of exposure to
5 Proposition 65 chemicals in drinking water sources, and/or monitoring of discharges of
6 Proposition 65 chemicals that have the potential to enter drinking water sources. Using the ASP,
7 CWF will work to monitor and understand the occurrence, scope, and impacts that pollutants
8 have upon drinking water sources, and users, in California. To these ends, CWF will request,
9 review, and analyze publicly available reports; conduct research and investigations in the field;
10 and work with affected individuals and communities first-hand. Where discharges of Proposition
11 65 chemicals may enter drinking water sources, and/or where degradation of drinking water may
12 occur, CWF will use its rights of public education, participation, and petition, to protect drinking
13 water sources from Proposition 65-listed contaminants. CWF will maintain adequate records to
14 document these activities, to demonstrate how the ASP funds are spent, and to demonstrate that
15 the funds are spent only for the proper, designated purposes described in this Consent
16 Judgment. Upon request, CWF shall provide the Attorney General, within thirty (30) days of any
17 request, copies of documentation demonstrating how such funds have been spent.

18 **3.1.4** The payments required under Sections 3.1.1-3.1.3 shall be made in one (1)
19 check delivered within thirty (30) days following the Effective Date, made payable to Aqua Terra
20 Aeris Law Group, LLP, to Jason Flanders at Aqua Terra Aeris Law Group, at the address set
21 forth in Section 7.1.2.

22 **3.1.5** For each month the Order Compliance Deadline(s) are extended pursuant to
23 Paragraph 2.1 above beyond September 1, 2021 (excepting delays constituting force majeure),
24 Settling Defendants shall pay to Plaintiffs:²

25
26 _____
27 ² Compliance with this provision shall not limit Valley Water's rights to seek reimbursement or
28 contribution to the maximum permitted by law against any third party, including the SPR
Defendants.

1 \$2,500 as a civil penalty pursuant to California Health & Safety Code § 25249.7(b), such
2 money to be apportioned by Plaintiffs in accordance with California Health & Safety
3 Code § 25249.12 (25% (\$625) to Plaintiffs and 75% (\$1,875) to the State of California's
4 Office of Environmental Health Hazard Assessment), and \$1,000 as a reimbursement of
5 Plaintiffs' reasonable attorneys' fees and costs. Any payments required pursuant to this
6 Section 3.1.5. shall each be made payable to Aqua Terra Aeris Law Group, LLP and
7 delivered to Jason Flanders at Aqua Terra Aeris Law Group, at the address set forth in
8 Section 7.1.2.

9 **4. GOVERNING LAW/ENFORCEMENT**

10 **4.1.** The terms of this Consent Judgment shall be governed by the law of the State of
11 California and apply within the State of California. The rights to enforce the terms of this
12 Consent Judgment are exclusively conferred on the Parties hereto. Any Party may, by motion or
13 application for an order to show cause before the Superior Court of Kern County, which shall
14 retain jurisdiction over this Consent Judgment for purposes of enforcement of its terms pursuant
15 to CCP § 664.6, enforce the terms and conditions contained in this Consent Judgment. Prior to
16 bringing any motion or application, the moving party shall meet and confer with the non-moving
17 party(ies) regarding their anticipated motion or application in an attempt to resolve the dispute
18 informally, including providing the non-moving party(ies) with a reasonable opportunity of at
19 least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution
20 fail, the moving party may file an enforcement motion or application. No party herein waives any
21 right(s) it may have under law to seek recovery of attorneys' fees and/or costs incurred through
22 dispute resolution or enforcement of this Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 **5.1.** This Consent Judgment may only be modified, supplemented, or terminated by
25 written agreement of Plaintiffs and Settling Defendants. However, in the event Proposition 65 or
26 its regulations applicable to the Settling Defendants, the Facilities, the Subject Chemicals, and/or
27 the discharges alleged in the Action are substantially revised, repealed, or invalidated, in whole or

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1 in part, whether by the Legislature, the People, the courts, or any administrative agency, then
2 Settling Defendants, or any of them, shall provide written notice to Plaintiffs, and shall have no
3 further obligations, and Plaintiffs shall have no ongoing release or covenant not to sue, pursuant
4 to this Consent Judgment, with respect to the obligations impacted by the same, subject to review
5 pursuant to the provisions in Section 4.1 of this Consent Judgment.

6 **6. MATTERS COVERED BY THIS CONSENT JUDGMENT**

7 **6.1. Plaintiffs' Release on Behalf of Public Interest.** This Consent Judgment is a
8 full, final, and binding resolution between Plaintiffs acting on their own behalf and in the public
9 interest, and Settling Defendants and Settling Defendants' respective shareholders, members,
10 directors, officers, managers, employees, representatives, agents, attorneys, divisions,
11 subdivisions, subsidiaries, partners, parent and sister companies, and affiliates, and their
12 predecessors, successors, and assigns ("Defendants Releasees") of all claims alleged in the Notice
13 or the Action arising from any violations of Proposition 65 that have been or could have been
14 asserted in the public interest against Settling Defendants and Defendant Releasees, regarding the
15 alleged discharges of Proposition 65 chemicals to sources of drinking water from the Facilities,
16 and thus compliance with Sections 2 and 3 of this Consent Judgment shall constitute compliance
17 with Proposition 65 as to the matters covered by this Consent Judgment.

18 In further consideration of the promises and agreements herein contained, and for the
19 payments to be made pursuant to Section 3 above, Plaintiffs, for themselves and on behalf of their
20 respective past and current agents, representatives, predecessors, successors, and/or assigns,
21 hereby covenant not to sue and hereby waive any right to institute or participate in, any form of
22 legal action and release all claims under Proposition 65 that they may have, including without
23 limitation, all actions and causes of action in law and in equity, all obligations, expenses
24 (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs),
25 damages, losses, liabilities and demands against any of the Defendants Releasees of any nature,
26 character, or kind, whether known or unknown, suspected or unsuspected, regarding the alleged
27 discharges to sources of drinking water from the Facilities. However, nothing in this Agreement

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1 limits or otherwise affects the Parties' rights to (i) address or take any position that they deem
2 necessary or appropriate in any formal or informal proceeding before any administrative or
3 legislative body; or (ii) intervene in any action to the extent reasonably necessary to protect their
4 interests under Sections 2, 3, and/or 6 of this Consent Judgment.

5 **6.2 Defendants' Release and Covenant**

6 Settling Defendants and Settling Defendants' respective shareholders, members, directors,
7 officers, managers, employees, representatives, agents, divisions, subdivisions, subsidiaries,
8 partners, parent and sister companies, and affiliates, and their predecessors, successors, and
9 assigns hereby release and covenant not to sue Plaintiffs and Plaintiffs' respective shareholders,
10 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
11 subdivisions, subsidiaries, partners, parent and sister companies, and affiliates, and their
12 predecessors, successors, and assigns from all claims, including without limitation, all actions and
13 causes of action in law and in equity, all obligations, expenses (including without limitation all
14 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
15 demands, related to or arising from the Notice or the Action that have been or could have been
16 asserted against Plaintiffs.

17 **6.3 California Civil Code Section 1542.** It is possible that other claims not known to
18 Plaintiffs arising out of the facts alleged in the Notice or the Action will develop or be discovered.
19 Plaintiffs acknowledge that this Consent Judgment is expressly intended to cover and include all
20 such claims up through the Effective Date, including all rights of action therefor. Plaintiffs
21 acknowledge that the claims released in Section 6.1 above may include unknown claims, and
22 nevertheless waive California Civil Code Section 1542 as to any such unknown claims.
23 California Civil Code Section 1542 reads as follows:

24
25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
26 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
27 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
28 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

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1 Plaintiffs acknowledge and understand the significance and consequence of this specific waiver
2 of California Civil Code Section 1542.

3 **7. PROVISION OF NOTICE**

4 **7.1.** When any Party is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail as follows:

6 **7.1.1. Notices to Settling Defendants.** The persons for Settling Defendants to
7 receive notices pursuant to this Consent Judgment shall be:

8 For the SPR Defendants:

9
10 Erin Gleaton
11 Vice President and General Counsel
12 Sentinel Peak Resources LLC
13 6501 East Belleview Avenue, Suite 400
14 Englewood, CO 80111
15 EGleaton@Sentinelpeakresources.com

16 With a copy to:

17
18 Bao M. Vu
19 Stoel Rives LLP
20 Three Embarcadero Center, Suite 1120
21 San Francisco, CA 94111
22 bao.vu@stoel.com

23 For Valley Water:

24
25 Jason Meadors, Manager
26 Valley Water Management Company
27 7500 Meany Ave., Bakersfield, CA 93308
28 jmeadors@valleywatermanagement.org

With a copy to:

Melissa A. Thorme
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
mthorme@downeybrand.com

Jean M. Pledger
Pledger Law, PC
1925 G Street
Bakersfield, CA 93301
jean@pledger.law

1 **7.1.2. Notices to Plaintiffs.** The persons for Plaintiffs to receive notices pursuant
2 to this Consent Judgment shall be:

3 Jennifer Clary, California Director
4 Clean Water Fund
5 350 Frank Ogawa Plaza Ste. 200
6 Oakland, CA 94612
7 jclary@cleanwater.org

8 Tom Frantz
9 Association of Irrigated Residents
10 29389 Fresno Ave.
11 Shafter, CA 93263
12 Tom.Frantz49@gmail.com

13 With a copy to:

14 Jason Flanders
15 Aqua Terra Aeris Law Group
16 4030 Martin Luther King Jr. Way
17 Oakland, CA 94609
18 jrf@atalawgroup.com

19 **7.2.** Any Party may modify the person and address to whom the notice is to be sent by
20 sending the other Parties notice by first class and electronic mail.

21 **8. COURT APPROVAL**

22 **8.1.** This Consent Judgment shall become effective on the Effective Date, provided,
23 however, that Plaintiffs shall prepare and file a Motion for Approval of this Consent Judgment
24 and Settling Defendants shall support approval of such Motion.

25 **8.2.** If this Consent Judgment is not entered by the Court, this Consent Judgment shall
26 be of no force or effect and shall not be introduced into evidence or otherwise used in any
27 proceeding for any purpose.

28 **9. NO ADMISSION**

9.1. This Consent Judgment is the direct result of a compromise of disputed allegations
and claims. As such, this Consent Judgment shall not, for any purpose, be considered as an
admission of liability by the Settling Defendants, nor shall the payment of any sum of money or
civil penalties in consideration for the execution of this Consent Judgment constitute or be

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1 construed as an admission of any liability by the Settling Defendants, which expressly deny any
2 such liability or wrongdoing.

3 **10. FORCE MAJEURE**

4 **10.1** No Party shall be deemed in default or breach of this Agreement by reason of any
5 event that constitutes a force majeure. For purposes of this Agreement, a force majeure is defined
6 as any event or obstacle arising from causes beyond the reasonable control of the Party or its
7 contractors that delay or prevents performance. This includes but is not limited to acts of God,
8 acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court
9 order or public authority, or other causes beyond the Party's reasonable control. Any Party
10 seeking to rely upon this paragraph shall provide written notice to all Parties within a reasonable
11 period of time upon the discovery of any event alleged to constitute force majeure, identifying the
12 corresponding Consent Judgment obligation(s) affected. In any dispute resolution under this
13 Consent Judgment regarding whether an event constituted force majeure, the Party invoking force
14 majeure shall have the burden of establishing that it could not reasonably have been expected to
15 control, and which by exercise of reasonable diligence could not have been avoided, the force
16 majeure event or occurrence.

17 **11. ENTIRE AGREEMENT**

18 **11.1.** This Consent Judgment contains the sole and entire agreement and understanding
19 of Plaintiffs and Settling Defendants with respect to the entire subject matter hereof, and any and
20 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
21 hereby merged herein and therein.

22 **11.2.** There are no warranties, representations, or other agreements between Plaintiffs
23 and Settling Defendants except as expressly set forth herein. No representations, oral or
24 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
25 have been made by any Party hereto.

26 **11.3.** No other agreements not specifically contained or referenced herein, oral or
27 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements

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1 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
2 any of the Parties hereto only to the extent that they are expressly incorporated herein.

3 **11.4.** No waiver of any of the provisions of this Consent Judgment shall be deemed or
4 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
5 such waiver constitute a continuing waiver.

6 **12. NEGOTIATED AGREEMENT**

7 **12.1.** No inference, assumption, or presumption shall be drawn, and no provision of this
8 Consent Judgment shall be construed against any of the Parties, based upon the fact that one of
9 the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this
10 Consent Judgment. It is conclusively presumed that the Parties participated equally in the
11 preparation and drafting of this Consent Judgment.

12 **13. RETENTION OF JURISDICTION**

13 **13.1.** Consistent with California Code of Civil Procedure Section 664.6, this Court shall
14 retain jurisdiction of this matter to implement or modify the Consent Judgment.

15 **14. REPRESENTATIONS AND WARRANTIES**

16 **14.1.** This Consent Judgment is given voluntarily, free of undue influence, coercion,
17 duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative,
18 or attorney of or for any Party, has made any statement or representation to any other Party
19 regarding any fact relied upon in entering this Consent Judgment, and no Party is relying upon
20 any statement, representation, or promise of any other Party, nor of any officer, agent, employee,
21 representative, or attorney of or for any Party, in executing this Consent Judgment or in making
22 the settlement provided herein, except as expressly stated in this Consent Judgment.

23 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

24 **15.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
26 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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16. NO EFFECT ON OTHER SETTLEMENTS

16.1. Nothing in this Consent Judgment shall preclude Plaintiffs from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

17. EXECUTION IN COUNTERPARTS

17.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

CLEAN WATER FUND



Signature

Robert Wendelgass

Printed Name

President & CEO

Title

ASSOCIATION OF IRRITATED RESIDENTS



Signature

Tom Frantz

Printed Name

President

Title

VALLEY WATER MANAGEMENT COMPANY



Signature

Charles H. Coufaut

Printed Name

President, Board of Directors

Title

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SENTINEL PEAK RESOURCES LLC



Signature


Michael Duginski

Printed Name

President and Chief Executive Officer

Title

SENTINEL PEAK RESOURCES CALIFORNIA LLC



Signature

Michael Duginski


Printed Name

President and Chief Executive Officer

Title

IT IS SO ORDERED:

Dated: Signed: 6/8/2021 10:02 AM _____, 2021



David R. Lampe
Judge of the Superior Court