



# **Stop Yucca Mesa Annexation Coalition**

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[www.StopYuccaMesaAnnexationCoalition.org](http://www.StopYuccaMesaAnnexationCoalition.org)

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P.O. Box 399

Yucca Valley, CA 92284

July 20, 2009

Kathleen Rollings-McDonald, Executive Officer  
Local Agency Formation Commission'  
215 N. "D" Street, Suite 204  
San Bernardino, CA 92415-0490

**Subject: LAFCO 3140 - Municipal Services Review and Sphere of Influence  
(Update) Hi-Desert Water District**

**Dear Ms. Rollings-McDonald:**

As indicated in your letter, dated July 13, 2009, our review and comments regarding the materials submitted to you from the Hi-Desert Water District for LAFCO 3140 are attached.

Very truly yours,

**STOP YUCCA MESA ANNEXATION COALITION**

**Robert N. Karman, Ph.D.  
Co-Founder**

**Elizabeth Karman  
Co-Founder**

**LAFCO 3140 - Service Review and Sphere of Influence Update  
Hi-Desert Water District  
Comments and Review of Hi-Desert Records by  
Stop Yucca Mesa Annexation Coalition**

**Sewer Master Plan - Section 2 - Service Area and Phasing Description**

**Section 2 of the Sewer Master Plan describes “ the District is divided topographically into the Yucca Valley area in the south and the Yucca Mesa area in the north. The Yucca Valley and Yucca Mesa areas are separated by the Sawtooth Mountains which lay generally east-west through the center of the District.”**

**The plan also states: “The District’s service area covers two distinct drainage areas. Of these, groundwater quality is currently a concern only in the more populated Yucca Valley drainage area. Due to the low density of development and minimal use of groundwater for potable purposes in Yucca Mesa, a sewer system is not proposed there. If in the future groundwater quality impacts arise due to the use of septic tanks, a separate sewer system and treatment facility would be constructed. This Master Plan, therefore, addresses the wastewater collection requirements only for the Yucca Valley drainage area, called the Yucca Valley Sewer System Boundary.”**

**Hi-Desert Water District’s MSR addresses revenue sources falling into two general categories. Operating Revenue and Non-Operating Revenue. Fees, assessments, and water usage rates can be increased.**

**To avoid significant future conflict and unhappy water customers in Yucca Mesa, the Coalition strongly urges the Hi-Desert Water District establish two revenue Areas: The Yucca Valley Area and the Yucca Mesa Area, using the Sawtooth Mountains as the dividing line. These two areas receive their water from two different sources: Yucca Valley’s source is the Warren Basin while Yucca Mesa’s source is the Ames Basin. Further, the Ames Valley Water Basin Agreement, dated January 10, 1991, Section 2.0, Limitation on the Use of Water, HDWD agreed that water pumped from Section 24 well and any other wells owned, operated, or controlled by HDWD be used only within the Ames Valley Water Basin (copy of agreement attached.) Yucca Mesa is clearly a separate area.**

**The sewage problems in the Yucca Valley Area occurred as a result the Town of Yucca Valley’s poor building practices, planning, over-building, inadequate developer fees, and implementation. On the other hand, Yucca Mesa, a slow growth, low density area, does not have either a sewage or drainage problem. Therefore, it should not be incumbent upon Yucca Mesa residents to pay for the Town of Yucca Valley’s wastewater treatment plant, sewers, and drainage. In fact, since Yucca**

**Mesa's water does not cycle through Yucca Valley, but rather stays in Yucca Mesa, Hi-Desert Water District should be providing Yucca Mesa with a much lower water rate than Yucca Valley pays now.**

**It should further be noted that the residents of Yucca Mesa are happy with their water service being provided by HDWD and DO NOT want the inexperienced Town of Yucca Valley to municipalize HDWD.**

**Attachments:**

- **Ames Valley Water Basin Agreement, dated January 10, 1991**
- **Hi-Desert Star Article, dated July 18, 2009, entitled "Hearing Exposes Concerns on Treatment Plant"**

# Hearing exposes concerns on treatment plant

## ■ Joshua Basin Water District among objectors

By Jimmy Biggerstaff  
Hi-Desert Star

YUCCA VALLEY — Proponents of a sewer system here are seeking a declaration that the wastewater treatment plant and collection system would not have a significant effect on the environment and does not require an environmental impact report.

A public hearing on the subject at the community center Wednesday evening was preceded by a presentation by Jose Angel, representing the Regional Water Quality Control Board.

Angel told Hi-Desert Water District directors the commu-

nity has a wastewater treatment problem that needs immediate action.

"The more you delay addressing the problem," Angel warned the directors, "the more it will cost."

Angel said the Regional Water Quality Control Board is cognizant of the economic impact of a sewer system on the town.

The water-regulation representative told the directors their choices for septage disposal are limited to constructing a municipal system or hauling septic discharge to a disposal facility.

"Soil is not an acceptable

repository for waste," Angel informed the board.

Angel detailed a spectrum of enforcement options ranging from notices of violations and non-compliance letters up to cease and desist and abatement orders, fines and injunctions.

"If we adopt a regulation, we will enforce it," Angel promised.

He said he believes the town government and water district are on the right track with their joint planning efforts, but he left no that the regional board will continue to monitor progress of the sewer system.

Tom Dodson, a consultant contracted by HDWD to handle the environmental aspects of the sewer system, led the directors through the initial

study and environmental assessment process.

The environmental engineer responded to concerns posed by the state's Department of Fish and Game about endangered species by stating, "No critical tortoise habitat occurs within the project area."

To concerns posed by the Morongo Basin Conservation Association that low-income residents would be adversely affected by the yet-to-be announced financial burden, Dodson said the comment was noted and will be made available to HDWD prior to a decision on the proposed project.

The local Marine Corps base expressed concern about significant impact to traffic along Twentynine Palms Highway during construction

of the proposed sewer trunk line and asked that Marine officials be notified before construction begins.

In lieu of the proposed sewer system, retired water operations manager Bill Horne suggested steel septic tanks be removed and a septic tank maintenance ordinance be adopted and enforced.

A letter from former HDWD director Wade White expressed dissatisfaction with the proposed sewer project, revolving around what White claims are unsupported projections of the future long-term water supply.

Plans for the sewer plant propose that initially, one million gallons each day of treated water would be percolated into the ground near Joshua Basin Water District's aquifer.

In addition to pointing out that HDWD failed to provide the appropriate public notice period for a mitigated negative declaration, Joshua Basin's written comments pointed out HDWD did not provide enough public-review time pursuant to guidelines under the California Environmental Quality Act.

Joshua Basin's letter claims its groundwater would be degraded by the nearby sewage treatment plant and urges HDWD to delay taking any action until they analyze concerns about pharmaceuticals and other contaminants from Yucca Valley's effluent polluting Joshua Tree's water.

The public hearing on the CEQA for the planned sewer project will be reopened at a future meeting.

AMES VALLEY WATER BASIN WATER

AGREEMENT

JANUARY 10, 1991

## AMES VALLEY WATER BASIN AGREEMENT

THIS AGREEMENT is entered into as of the 10th day of January, 1991 by and between the HI-DESERT WATER DISTRICT, a County Water District (hereinafter "HDWD") and the BIGHORN-DESERT VIEW WATER AGENCY, a public agency, (hereinafter "BDVWA").

### R E C I T A L S

A. HDWD is a County Water District organized and operating pursuant to Section 30000 et seq., of the California Water Code.

B. BDVWA is a public agency formed by an special act of the legislature and operating under the Water Code Appendix Section 112-1, et seq.

C. HDWD has entered into a contract for water to be extracted from a well located in Section 24, Township 2 North, Range 5 East, SBBM in San Bernardino County, California (also referred to as the "Mainstream Well") and has adopted an Environmental Impact Report (EIR) for the construction of facilities to take water from that well.

D. BDVWA has protested that EIR, and filed suit in the Superior Court of San Bernardino County (Bighorn Mountain Water Agency, et al. v. Hi-Desert Water District, Case No. BCV 5157).

E. The parties desire to enter into this AGREEMENT for the purpose of settling the litigation, and providing information on, and dealing with the environmental impacts from water extractions from the Ames Valley Water Basin in San Bernardino County. This AGREEMENT shall never be treated or otherwise construed as an admission of liability and/or inadequacy of the EIR by either party for any purpose.

### C O V E N A N T S

NOW THEREFORE, in consideration of the preceding RECITALS and the mutual COVENANTS contained herein, the parties agree as follows:

Section 1.0 STIPULATED JUDGMENT AS AMENDMENT OF "EIR". The parties will enter into a Stipulation for Judgment embodying the terms and conditions of this AGREEMENT, and such stipulated judgment shall be deemed to be an amendment of the EIR.

Section 2.0 LIMITATION ON THE USE OF WATER. HDWD agrees that water pumped from the Section 24 Well and any additional wells owned, operated or controlled by HDWD within the Ames Valley Water Basin will be limited to eight hundred (800) acre feet per year, and that the water delivered from wells within the Ames Valley Water Basin will be used only within the Ames Valley Water Basin. The amount of water pumped in the Ames Valley Water Basin may be increased depending on the water needs of property owners within the Ames Valley Water Basin by an amount equal to one half acre feet per year for each new residential water meter installation by HDWD following approval of this AGREEMENT by the parties. The Ames Valley Water Basin is identified for the purposes of this AGREEMENT in Exhibit "A", which is attached hereto and incorporated herein by reference.

Section 2.1 MODIFICATION TO THE WELL. HDWD agrees at its expense to place a "sleeve", or other device, in the Section 24 Well to seal the upper aquifer and to prevent pumping of water from that zone. The HDWD engineer, in consultation with the BDVWA engineer, shall evaluate water quality individually in both the upper and lower aquifer and shall test for possible flow between the upper and lower aquifers. If there is agreement between engineers that a "sleeve", or other device, is not required prior to production, BDVWA agrees that the "sleeve", or other device, will be installed at a future date, if so required at that time.

Section 3.0 MONITORING PROGRAM. The parties hereto agree to establish and implement a groundwater monitoring program to mitigate any potential environmental damage to the hydrologic resources of the Ames Valley Water Basin caused by the Section 24 Well, or from additional production wells. Monitoring of the wells included in the program, as listed in Exhibit "B", which is attached hereto and incorporated herein by reference, will commence immediately following execution of this AGREEMENT. Any new production wells shall be added automatically to Exhibit "B" for inclusion in the monitoring program, and if production shall be terminated as to any production well included in Exhibit "B", it shall be dropped from the program.

Section 3.1 MONITORING TEAM. The recording of well data, sampling and the taking of well measurements shall be accomplished by a team consisting of one representative each from HDWD and BDVWA. Working together, one team member shall sample, sound and take readings and record them on a form approved by both parties. The other team member shall confirm all recorded data and both team members shall initial and date the form and distribute copies to the respective parties. Team members shall be instructed in correct data collection, sampling and sounding techniques.

Section 3.2 PREPARATION OF WELLS. All wells in the program shall be identified by State Well Number, where possible. All wells shall have a designated reference point (top of casing or measuring tube, etc.) and the elevation of the reference point of selected wells shall be determined by a surveyor prior to production. Each well to be monitored for production shall be equipped with a totalizing flowmeter reading in gallons per minute for pumping rate and in gallons per minute, or cubic feet, for total quantity pumped.

Section 3.3 WELL MEASUREMENT AND SAMPLING. All well sounding measurements shall be taken with a sounding device approved by both parties. The sounding device shall be calibrated at the start of the program and recalibrated at least every six (6) months thereafter. Each production well shall be off, if possible, at least two (2) hours prior to sounding for a static level. The recovery time should be consistent for all readings taken at a given well. Well measurements shall be taken on the same time of the day and date of the month, insofar as possible. Any deviation from the regular monitoring schedule shall be so noted on the recording form. Water quality samples shall be taken from production wells and the method of sampling shall be consistent for all wells sampled. All laboratory testing shall be accomplished by the same firm, if possible. Samples shall be tested according to the latest requirements of Title 22 of the California Domestic Water Quality and Monitoring Regulations and other applicable regulations. The frequency of monitoring shall be accordance with Exhibit "C", which is attached hereto and incorporated herein by reference. HDWD and BDVWA shall provide to each party copies of all available historical well data, including static and pumping water levels, pumping quantities and water quality reports and each party shall maintain identical data bases in a mutually agreed format.

Section 3.4 DATA EVALUATION. HDWD and BDVWA shall be responsible for the submission to, and evaluation of, monitoring data by their respective consultants. Within thirty (30) days following the end of each six (6) month period, each respective consultant shall evaluate the collected data and make a written report on the progress of the monitoring program, including recommendations, if any. Copies of these, and other applicable reports shall be distributed to the other parties to this AGREEMENT.

Section 4.0 ENVIRONMENTAL ACTION CRITERIA. Criteria which shall initiate immediate environmental review are identified in Exhibit "D", which is attached hereto and incorporated herein by reference. Any water level or water quality decline exceeding the criteria shall be cause for a written request for a reduction or cessation of the pumping of the Section 24 Well. Such request shall be delivered to the HDWD office and shall be documented with supporting data.

Section 5.0 CORRECTIVE ACTION. HDWD shall reduce pumping in the Section 24 Well to an amount not to exceed one (1) acre foot per twenty-four (24) hour period within forty-eight (48) hours of receiving a written request from BDVWA. HDWD shall maintain the reduced pumping level until the general managers of HDWD and BDVWA, and their designated consultants, have reviewed collected data, met in conference to make recommendations, and have reached agreement regarding the future operations of the well. If HDWD and BDVWA are unable to agree on a course of action within thirty (30) days from the date of the original request, reduced production in pumping shall continue and the matter shall be submitted for arbitration by an independent consultant, as provided in Section 5.3 herein.

Section 5.1 PRODUCTION REMEDY. BDVWA shall, if so requested in writing by HDWD, replace water production lost from the Section 24 Well during the period of reduced pumping, not to exceed six (6) months, at a price per acre foot comparable to that currently paid by HDWD for the lost production.

Section 5.2 DESIGNATION OF CONSULTANTS. Each party hereto, shall designate the consultant to be retained to evaluate the data from the monitoring program. Such consultant shall remain the primary consultant of the party during the term of this agreement unless notification of a change is provided in writing.

Section 5.3 ARBITRATION OF ENVIRONMENTAL ACTIONS. Respective to Section 5.0 herein, HDWD and BDVWA consultants shall recommend an independent arbitrator who shall be capable of making proper evaluation of the data, and he shall provide recommendations on corrective action, if any. The parties agree that this arbitrator will be retained to examine the data and reports of the consultants and make a binding determination on the impacts of the data and impose the most effective corrective action, if any. If the respective consultants of HDWD and BDVWA are unable to agree on a designated arbitrator within a forty-five (45) day period from the date of the original request, an arbitrator shall be appointed in accordance with the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure. At any time following implementation of the arbitrator's decision, either party may request a conference as between the general managers of HDWD and BDVWA and their respective designated consultants, to reach agreement on a proposed modification or elimination of the corrective action imposed by the arbitrator. If the general managers and the designated consultants are unable to arrive at a mutually acceptable solution, the parties shall again proceed in accordance with this Section 5.3.

Section 6.0 PROGRAM COSTS. Program costs, other than in-house manpower, designated consultants and the support thereof, incurred by the parties relating to the program (survey, sampling, laboratory, arbitration, etc.) shall be shared equally by the parties.

Section 7.0 PROGRAM PERIOD. The program shall be ongoing and may be expanded or terminated by the unanimous consent of all parties.

Section 8.0 INDEMNIFICATION. Each party agrees to indemnify, hold harmless, and assume the defense of the other party, its officers, agents, employees, and elective Boards, and pay all court costs and reasonable attorneys fees relating thereto, in any action, with respect to a claim, loss, damage or injury, asserted by a third party against the party entitled to indemnification hereunder, and arising out of a negligent act, error or omission, or wilful misconduct, of an employee or agent of the party whose actions under this AGREEMENT gave rise to such third party claim.

Section 9.0 NOTICES. Any notice, tender or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in the case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this Section.

TO: HI-DESERT WATER DISTRICT  
6955 Old Woman Springs Road  
Yucca Valley, CA 92284  
Attention: General Manager

TO: BIGHORN-DESERT VIEW WATER AGENCY  
P. O. Box 3838  
1720 North Cherokee Trail  
Landers, CA 92285  
Attention: General Manager

Section 10.0 ARBITRATION OF DISPUTES. Other than those disputes which shall be arbitrated under Section 5.3, any dispute or controversy arising out of, under, or in connection with, or in relation to the AGREEMENT, and any amendments thereof, or the breach thereof, shall be submitted to arbitration in accordance with the following procedures:

A party desiring arbitration ("First Party") shall give written notice to the other party ("Second Party") containing a general description of the controversy to be submitted to arbitration and designating by name and address, three proposed arbitrators acceptable to the First Party, each of whom have agreed to act as arbitrator, if selected. If the Second Party agrees upon one of the three proposed arbitrators. The Second Party shall so advise the First Party in writing within ten (10) business days of such written notice by the First Party.

The arbitrator selected shall promptly give written notice of the arbitration hearing which shall take place within sixty (60) days of the date as is selected by the arbitrator. The arbitration hearing shall take place at a location mutually agreeable to the parties, but within San Bernardino County, California.

If the Second Party fails to agree to the selection of one of the three proposed arbitrators within the ten (10) business day period, an arbitrator shall be appointed in accordance with the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure.

The cost of the arbitration shall be paid by the parties equally. Except as otherwise provided herein, the arbitration shall be conducted and enforced in accordance with the provisions of the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure.

Section 11.0 ATTORNEYS FEES. If a dispute arises, which cannot be resolved by arbitration, regarding breach or enforcement of the provisions of this AGREEMENT, the responding and/or defending party who is determined to be the prevailing party therein shall be entitled to recover all attorneys fees or other costs actually incurred in connection with resolving the dispute only if litigation is filed and judgment is rendered. In any action brought, the entitlement to recover attorneys fees and costs will be considered an element of costs and not of damages

Section 12.0 AMENDMENTS. This is an entire AGREEMENT and supercedes all prior agreements oral or written between the parties, and their agents, and cannot be amended unless in writing, with specific reference hereto by the parties authorized to be charged. Failure by either party to enforce any provisions shall not constitute a waiver of said party's right to enforce subsequent violation of the same or any other provisions.

Section 13.0 INUREMENT. This AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the parties.

Section 14.0 CAPTIONS. The captions of Sections and Subsections of this AGREEMENT are for reference only and are not to be construed in any way as a part of this AGREEMENT.

Section 15.0 VALIDITY. This AGREEMENT will be construed in accordance with the laws of the State of California.

Section 16.0 SEVERABILITY. If any section, clause or phrase of this AGREEMENT is for any reason held to be unconstitutional or unlawful, such a decision shall not effect the validity of the remaining portions of this AGREEMENT.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their respective officers as of this date first above written.

HI-DESERT WATER DISTRICT

BY *Carl M. Jattus*  
Board President

ATTEST *[Signature]*  
Board Secretary

BIGHORN-DESERT VIEW WATER AGENCY

BY *Elmer Pace*  
Board President

ATTEST *Geraldine Connor*  
Board Secretary

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "A"  
LEGAL BOUNDARIES OF THE AMES VALLEY WATER BASIN  
(MAP ATTACHED)

The boundaries of the Ames Valley Water Basin, for the purposes of this monitoring program, shall be as follows: Township 1 North, Range 5 East, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24; Township 1 North, Range 6 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21; Township 2 North, Range 5 East, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; Township 2 North, Range 6 East, Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; all located within San Bernardino County.

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "B"  
LIST OF MONITORING WELLS

<u>OWNER</u>	<u>LOCATION</u>	<u>STATUS</u>
Archie King	2N/5E/26B,SBM	Dormant
DV #1 (BDVWA)	2N/5E/23M,SBM	Dormant
Joan Hayes	2N/5E/23D,SBM	Dormant
DV #2 (BDVWA)	2N/5E/27J1,SBM	Producing
DV #3 (BDVWA)	2N/5E/27J01S,SBM	Producing
DV #4 (BDVWA)	2N/5E/27R,SBM	Producing
USGS Test Well	2N/5E/27A,SBM	Dormant
Moran	2N/5E/13A,SBM	Dormant
BH #2 (BDVWA)	2N/5E/12B1,SBM	Producing
BH #3 (BDVWA)	2N/5E/12B2,SBM	Producing
Gubler Farm	2N/5E/1K1,SBM	Producing
Gubler Farm	2N/5E/1K2,SBM	Dormant
Gubler Farm	2N/5E/1G1,SBM	Dormant
Gubler Farm	2N/5E/1H1,SBM	Producing
BH #1 (BDVWA)	2N/6E/18P,SBM	Dormant
W-1 #3 (COUNTY)	2N/5E/18,SBM	Producing
W-1 #2 (COUNTY)	2N/6E/18,SBM	Producing
W-1 #1 (COUNTY)	2N/6E/7,SBM	Dormant
HD #6 (HDWD)	2N/6E/30,SBM	Dormant
HD #10 (HDWD)	1N/6E/17,SBM	Producing
MAINSTREAM (HDWD)	2N/5E/24,SBM	Producing
HD #20 (HDWD)	2N/6E/36,SBM	Producing
HD #21 (HDWD)	2N/5E/2,SBM	Dormant
Patty Karawczyk	2N/5E/25,SBM	Producing

AMES VALLEY WATER BASIN MONITORING PROGRAM  
EXHIBIT "C"  
WELL MONITORING FREQUENCY

<u>TIME INTERVAL</u>	<u>GROUNDWATER LEVELS</u>	<u>GROUNDWATER QUALITY</u>	<u>GROUNDWATER PRODUCTION</u>
0 to 15	Every 5 Days	1st Day Only	Daily
16 to 30	Every 7 Days	Day 30	Daily
31 to 90	Every 14 Days	Day 90	Daily
Over 91	Monthly	Annually	Daily

NOTES:

1. Time interval is in number of days from the start of production from the Mainstream Well.
2. Static groundwater levels apply to all monitoring wells. Pumping levels on production wells should be noted at least once monthly, where possible.
3. Groundwater quality is applicable to production wells only. Production wells located in pairs shall be considered a single wellfield and water samples shall be rotated between each.

AMES VALLEY WATER BASIN MONITORING PROGRAM  
 EXHIBIT "D"  
 CRITERIA FOR IMPLEMENTING ENVIRONMENTAL REVIEW

Cumulative Water Level Decline in Feet over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Production Wells	7	8	9	10	11
Other Wells	2	3	3	3	4

Cumulative Water Quality Decline in Percent over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Fluoride Increase	30	30	30	30	30
TDS Increase	20	20	20	20	20
Alpha Increase	50	50	50	50	50
Other Components	50	50	50	50	50

NOTES:

1. All criteria measured relative to values in individual monitoring wells measured prior to the start of production in the Mainstream Well. These values will constitute the baseline values for water levels and water quality. The initial measurements shall be reviewed by the parties for consistency with historical measurements.



R6E  
R5E

30

T2N  
T1N

3854

3700

3495

Aberdeen Drive

Bona Vista Drive

3854

~~3700~~

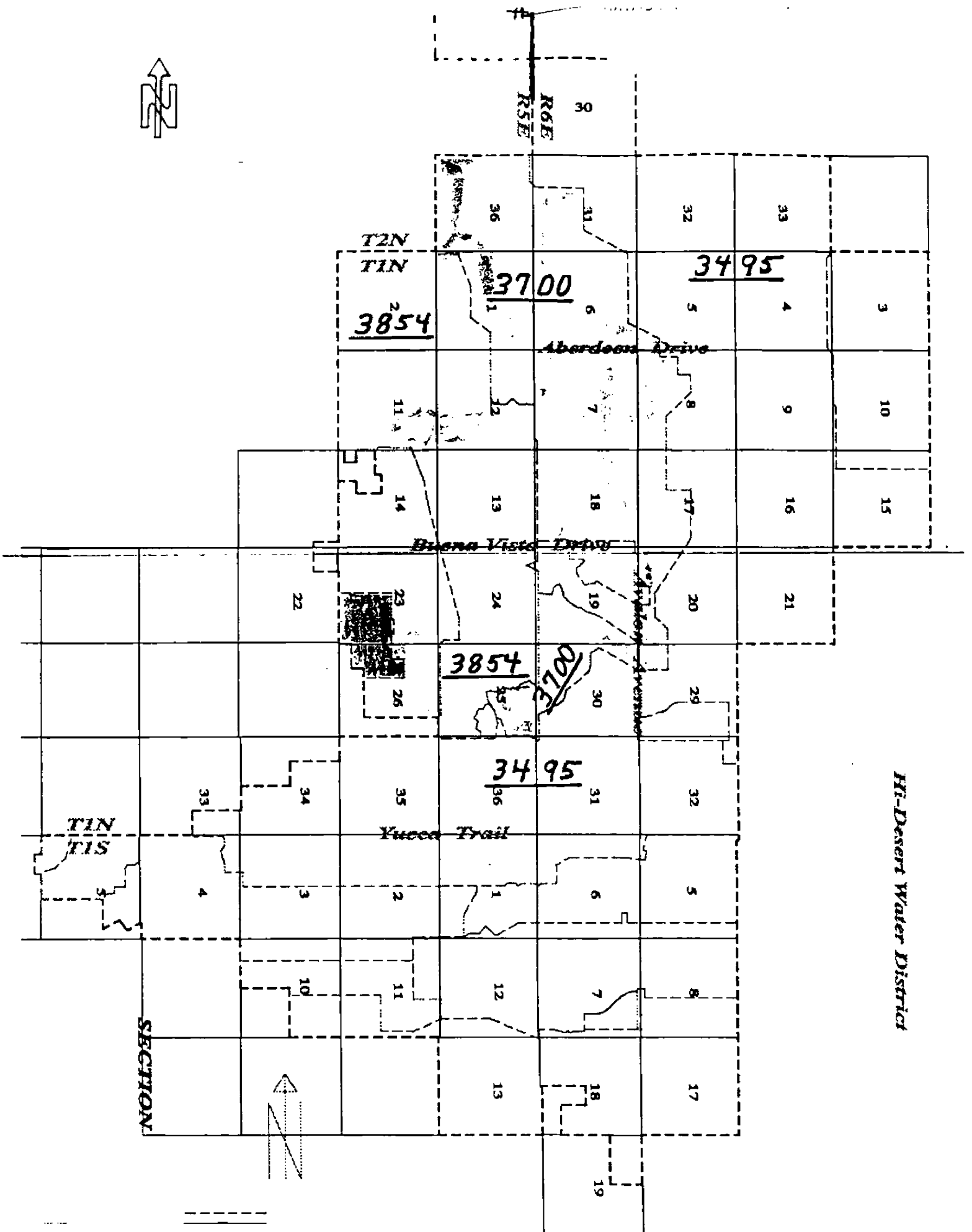
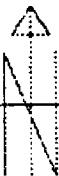
3495

Yucca Trail

Hi-Desert Water District

T1N  
T1S

SECTION



AMES VALLEY WATER BASIN WATER

AGREEMENT

AMMENDMENT #1

AUGUST 12, 1993

**AMENDMENT NUMBER ONE TO THE AMES VALLEY WATER BASIN  
AGREEMENT DATED JANUARY 10, 1991**

**WHEREAS, on January 10, 1991 the Hi-Desert Water District (HDWD) and the Bighorn-Desert View Water Agency (BDVWA) entered into an agreement entitled the Ames Valley Water Basin Agreement (Agreement); and,**

**WHEREAS, Section 12.0 of said Agreement specifically provides for amendment of said Agreement; and,**

**WHEREAS, both parties to said Agreement now desire to amend Section 3.1, Section 3.4, Section 5.2, Section 5.3, Section 9.0, Exhibit B and Exhibit C of said Agreement.**

**NOW, THEREFORE, in consideration of the mutual consent by both parties, said Agreement shall be amended as follows:**

**1. Section 3.1 is amended to read as follows in its entirety. Section 3.1 MONITORING TEAM. The recording of well measurements shall be accomplished by a team consisting of one representative each from HDWD and BDVWA. Working together the team shall sound and record the data on a form approved by both parties. The team members shall confirm all recorded data, initial and date the form, and distribute copies to the respective parties. Team members shall be instructed in the correct sounding and data recordation techniques. All other data collection shall be done respectively by in-house employees and the data exchanged monthly or as soon as collected, which ever is agreed upon by both parties.**

**2. Section 3.4 is amended to read as follows in its entirety. Section 3.4 DATA EVALUATION. At the end of each six month period HDWD and BDVWA shall submit to a qualified independent consultant, which has been agreed upon and selected by both parties, the data collected in the monitoring program for evaluation. Within thirty days the consultant shall evaluate the data and provide a written report to both parties on the progress of the monitoring program, including any recommendations.**

3. Section 5.2 is amended to read as follows in its entirety. Section 5.2 DESIGNATION OF CONSULTANT. Both parties shall agree upon and designate a qualified independent consultant to be retained, and jointly paid for by HDWD and BDVWA, to evaluate the data collected from the monitoring program. Said consultant shall remain the primary consultant throughout the term of this Agreement unless both parties agree to change the consultant in writing. The parties understand and agree that the retention of such consultant shall not have a conflict of interest with either party. Nothing in this section shall preclude either party from retaining their own consultant at their own cost to review all data collected from the monitoring program. If both parties do not agree upon and designate a single qualified consultant to review all data collected in the monitoring program, the parties hereto shall retain their own independent consultant at their own expense to review the data collected.

4. Section 5.3 is amended to read as follows in its entirety. Section 5.3 ARBITRATION OF ENVIRONMENTAL ACTION. In reference to Section 5.0 herein, the independent consultant shall recommend an independent arbitrator, acceptable to BDVWA and HDWD, capable of making a proper evaluation of the monitoring data, and the independent arbitrator shall make recommendations on the corrective action, if any. Both parties agree that the independent arbitrator shall be retained to examine all the data and reports and make a binding determination based on the impact to the Ames Valley Water Basin and impose the most effective corrective action, if any. If HDWD and BDVWA are not able to agree on an independent arbitrator within forty-five days of the original request date for arbitration, an arbitrator shall be appointed in accordance with the California Arbitration Act, Section 1280 through 1294.2 of the Code of Civil Procedure. At any time following the implementation of the arbitrators decision, either party may request a conference between both parties in an effort to reach agreement on a proposed modification or elimination of the corrective action imposed by the arbitrator. Any modification or elimination of said corrective action must be agreed to by both parties in writing. If both parties can not agree upon a mutually acceptable solution, the arbitrators decision shall remain in effect.

5. Section 9.0 is amended to read as follows in its entirety.  
Section 9.0 NOTICES. Any notice, tender or delivery to be given hereunder by either party to the other shall be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing or in the case of personal delivery, as of actual receipt. Mailed notices shall be addressed as set forth below, but each party may change its address by written notice in accordance with this section.

**To: HI-DESERT WATER DISTRICT**  
6955 Old Woman Springs Road  
Yucca Valley, CA 92284  
Attn: General Manager

**To: BIG-HORN DESERT VIEW WATER AGENCY**  
Post Office Box 3838  
Landers, CA 92285  
Attn: General Manager

6. Exhibit B is amended to read as follows in its entirety.  
**AMES VALLEY WATER BASIN MONITORING PROGRAM**  
**EXHIBIT B**  
**LIST OF WELLS TO BE MONITORED**

1	Gubler Farm	2N/5E/1G1 SBM	Mon.
2	Gubler Farm	2N/5E/1H1 SBM	Pro.
3	Gubler Farm	2N/5E/1K1 SBM	Pro.
4	BDVWA #9	2N/5E/12C025 SBM	Pro. *
5	BDVWA #6	2N/5E/12B1 SBM	Pro.
6	BDVWA # 7	2N/5E/12B2 SBM	Pro.
7	Moran	2N/5E/13A SBM	Mon.
8	CSA70W-1 #1	2N/6E/18 SBM	Pro.
9	CSA70W-1 #2	2N/6E/18 SBM	Pro.
10	Hayes	2N/5E/23D SBM	Mon.
11	HDWD #MS	2N/5E/24 SBM	Pro. **
12	BDVWA #8	2N/5E/22J01S SBM	Pro. *
13	BDVWA #1	2N/5E/23M SBM	Mon.
14	USGS	2N/5E/27A SBM	Mon.
15	BDVWA #3	2N/5E/27J10S SBM	Pro.
16	BDVWA #2	2N/5W/27J1 SBM	Pro.
17	BDVWA #4	2N/5E/27R SBM	Pro.
18	HDWD HD#6	2N/6E/30 SBM	Mon.
19	HDWD HD #20	2N/5E/36 SBM	Mon.
20	HDWD HD #21	1N/5E/2 SBM	Mon.
21	HDWD HD#10	1N/6E/17 SBM	Pro.

\* Newly added production wells.

\*\* Monitoring begins when production begins.

**7. Exhibit C is amended to read as follows in its entirety.**  
**AMES VALLEY WATER BASIN MONITORING PROGRAM**  
**EXHIBIT C**  
**WELL MONITORING FREQUENCY**


<b>Time Interval</b>	<b>Groundwater Levels</b>	<b>Groundwater Quality</b>	<b>Groundwater Production</b>
<b>0-15</b>	<b>Every 5 days</b>	<b>1st day</b>	<b>Daily</b>
<b>16-30</b>	<b>Every 7 days</b>	<b>Day 30</b>	<b>Daily</b>
<b>31-90</b>	<b>Every 14 day</b>	<b>Day 90</b>	<b>Daily</b>
<b>Over 91</b>	<b>Monthly</b>	<b>Annually</b>	<b>Daily</b>

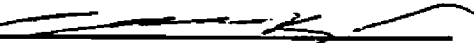
**NOTES:**

- 1. Time interval is in number of days from the start of production from the Mainstream well.**
- 2. Static groundwater levels apply to all wells being monitored. Pumping levels on production wells should be noted at least once monthly, where possible.**
- 3. Groundwater quality monitoring is applicable to production wells only. Production wells located within 1,500 feet of each other shall be considered a single wellfield and water quality samples shall be rotated between each well annually.**

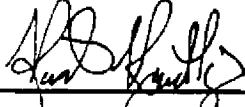
IN WITNESS WHEREOF, the parties hereto have executed this amendment to said Agreement pursuant to authorization from their respective Boards of Directors.


HI-DESERT WATER DISTRICT

By:  Date: July 21, 1993  
President of the Board

By:  Date: July 21, 1993  
Secretary of the Board

BIGHORN-DESERT VIEW WATER AGENCY

By:  Date: August 12, 1993  
President of the Board

By:  Date: Aug 12, 1993  
Secretary of the Board

AMES VALLEY WATER BASIN WATER

AGREEMENT

AMMENDMENT #2

FEBRUARY 6, 1997

PROPOSED AMENDMENT NO. 2 TO THE  
AMES VALLEY WATER BASIN AGREEMENT  
DATED JANUARY 10, 1991

WHEREAS, on January 10, 1991, the Hi-Desert Water District (HDWD) and the Bighorn-Desert View Water Agency (BDVWA) entered into an agreement entitled the Ames Valley Water Basin Agreement; and,

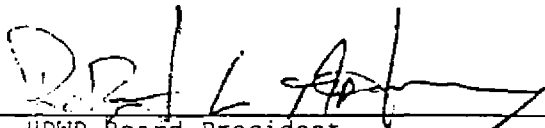
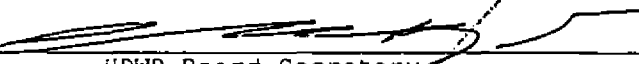
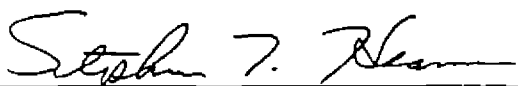
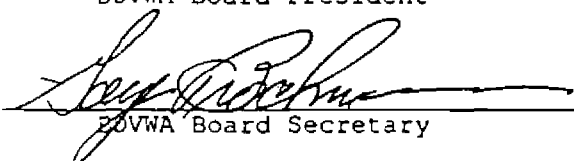
WHEREAS, Section 12.0 of said agreement specifically provides for the amendment of said agreement; and,

WHEREAS, both parties to said agreement now desire to amend Section 3.4 of said agreement.

NOW, THEREFORE, in consideration of the mutual consent by both parties, said agreement shall be amended as follows:

Section 3.4 DATA EVALUATION. On or before February 1st of each calendar year HDWD and BDVWA shall submit to a qualified independent consultant, which has been agreed upon and selected by both parties, the data collected in the monitoring program for evaluation. On or before March 1st of each calendar year said consultant shall supply the parties hereto with a written report on the evaluation of the data supplied. The report shall also contain any recommendations derived from the evaluation of said data.

IN WITNESS HEREOF, the parties hereto have executed this amendment to said agreement pursuant to authorization from their respective Boards of Directors.

 _____ HDWD Board President	<u>2/6/97</u> Date
 _____ HDWD Board Secretary	<u>1-23-97</u> Date
 _____ BDVWA Board President	<u>1/21/97</u> Date
 _____ BDVWA Board Secretary	<u>1/21/97</u> Date

AMES VALLEY WATER BASIN WATER  
AGREEMENT

COURT'S RULING AND RELATED  
ORDER ON HI DESERT'S MOTION TO  
REFORM THE JUDGMENT IN 2001

NOVEMBER 8, 2001

1 ROBERT H. CLARK, ESQ.  
 2 23560 Lyons Avenue, Suite 208  
 3 Santa Clarita, California 91321  
 4 (805) 259-9566

5 Attorney for Petitioners and Plaintiffs

6  
 7  
 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF RIVERSIDE

10

11 BIGHORN MOUNTAINS WATER	)	CASE NO. <u>211504</u>
12 AGENCY, a public entity,	)	
13 and DESERT VIEW WATER	)	
14 DISTRICT, a public entity	)	JUDGMENT
15	)	
16                   Petitioners and	)	
17                   Plaintiffs,	)	
18                   v.	)	
19 HI-DESERT WATER DISTRICT,	)	
20 a public entity,	)	
21	)	
22                   Respondent and	)	
23                   Defendant,	)	
24 MAINSTREAM WATER DEVELOPMENT	)	
25 COMPANY, a California limited	)	
26 partnership; MIKE V. PAGE, an	)	
27 individual doing business as	)	
28 MAINSTREAM WATER DEVELOPMENT	)	
COMPANY; and DOES 1-25,	)	
Real Parties in Interest.	)	

24           On January 23, 1989, Bighorn Mountains Water Agency, a public  
 25 entity, and Desert Water District, a public entity, and which  
 26 entities are now consolidated under the provisions of the Bighorn-  
 27 Desert View Water Agency Law, with the name Bighorn-Desert View  
 28 Water Agency, filed in the Superior Court of the State of California

1 in and for the County of San Bernardino, as Case No. BCV 5157, a  
2 "PETITION FOR WRIT OF MANDATE [C.C.P. §§1085, 1086]; AND COMPLAINT  
3 FOR DECLARATORY RELIEF [C.C.P. §1060]." On March 6, 1989 a  
4 "RESPONSE AND ANSWER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT  
5 FOR DECLARATORY RELIEF" was filed by defendant and respondent Hi-  
6 Desert Water District, a public entity, and real parties in interest  
7 Mainstream Water Development Company, a California limited  
8 partnership, and Mike V. Page, an individual doing business as  
9 Mainstream Water Development Company.

10 Venue in said Case No. 5157 was changed and it was transferred  
11 to the above-entitled court for trial or other disposition. It is  
12 now pending in this court. There has been filed herein a  
13 stipulation for Judgment signed by all of the parties.

14 After due examination and consideration of the pleadings, said  
15 Stipulation for Judgment and other documents and papers on file  
16 herein, it appears to the Court that:

17 (a) On the basis of the Stipulation for Judgment filed herein  
18 and the consent of plaintiff and petitioner Bighorn-Desert View  
19 Water Agency (herein "BDVWA"), defendant and respondent Hi-Desert  
20 Water District (herein "HDWD"), and real parties in interest  
21 Mainstream Water Development Company and Mike V. Page, it is in the  
22 interests of justice and in furtherance of the purposes and  
23 objectives of the California Environmental Quality Act, to proceed  
24 without trial and to make and enter this Judgment.

25 (b) The declarations, determinations, and orders embodied in  
26 this Judgment, deal only with the production of water from the Ames  
27 Valley Water Basin and the use of such water within that basin.  
28 They do not deal with any environmental impacts that may be

1 associated with or result from the exportation of water produced  
2 from that basin for use outside of that basin. The declarations,  
3 determinations and orders constitute a feasible, equitable and just  
4 resolution of the issues presented by the complaint and petition,  
5 and answer thereto, on file herein, and which relate to such  
6 production of water from the Ames Valley Water Basin and the use of  
7 such water within that basin. Compliance with this Judgment will  
8 adequately mitigate and control the environmental impacts of the  
9 project which is the subject of this action.

10 Now, therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

11 1. The Court has jurisdiction of the subject matter of this  
12 action and jurisdiction over plaintiff and petitioner Bighorn-Desert  
13 View Water Agency and defendant and respondent HI-Desert Water  
14 District, those entities being the two parties having continuing  
15 rights, duties and obligations under the terms and provisions of  
16 this Judgment.

17 2. Water pumped from that certain well constructed on behalf  
18 of HDWD and located in Section 24, Township 2 North, Range 5 East,  
19 San Bernardino Base and Meridian, in San Bernardino County,  
20 California (referred to as the "Mainstream Well"), and any  
21 additional wells owned, operated, or controlled by HDWD within the  
22 Ames Valley Water Basin, is limited to a total of eight hundred  
23 (800) acre-feet per year. Any and all water delivered from such  
24 wells located within the Ames Valley Water Basin shall be used only  
25 within the Ames Valley Water Basin. The amount of water pumped by  
26 HDWD from the Ames Valley Water Basin may be increased, depending on  
27 the water needs of property owners within the Ames Valley Water  
28 Basin, by an amount equal to one-half acre foot per year for each

1 new residential water meter installed by HDWD following entry of  
2 this Judgment. The Ames Valley Water Basin is identified in Exhibit  
3 "A" to this Judgment, as set forth herein.

4 3. HDWD shall at its expense place a "sleeve," or other  
5 device, in the Mainstream Well to seal the upper aquifer and to  
6 prevent pumping of water from that zone. HDWD's engineer, in  
7 consultation with BDVWA's engineer, shall evaluate water quality  
8 individually in both the upper and lower aquifer and shall test for  
9 possible flow between the upper and lower aquifers. If there is  
10 agreement between those engineers that a "sleeve," or other device,  
11 is not required prior to production, the "sleeve," or other device,  
12 shall be installed by HDWD at a future date, if so required at that  
13 time.

14 4. HDWD and BDVWA shall establish and implement a groundwater  
15 monitoring program to mitigate any potential environmental damage to  
16 the hydrologic resources of the Ames Valley Water Basin caused by  
17 the Mainstream Well, or by additional production wells. Monitoring  
18 of the wells included in the program, as listed in Exhibit "B" to  
19 this Judgment, as set forth herein, shall commence immediately. Any  
20 new production wells shall as between the parties be deemed added  
21 automatically to Exhibit "B" for inclusion in the monitoring  
22 program, and if production shall be terminated as to any production  
23 well included in Exhibit "B," it shall be deemed dropped from the  
24 program.

25 5. The recording of well data, sampling, and the taking of  
26 well measurements, shall be accomplished by a team consisting of one  
27 representative each from HDWD and BDVWA. Working together, one  
28 team member shall sample, sound, and take readings and record them

1 on a form approved by both parties. The other team member shall  
2 confirm all recorded data, and both team members shall initial and  
3 date the form and distribute copies to the respective parties. Team  
4 members shall be instructed in correct data collection, sampling and  
5 sounding techniques.

6 6. All wells in the program shall be identified by State Well  
7 Number, where possible. All wells shall have a designated reference  
8 point (top of casing or measuring tube, etc.) and the elevation of  
9 the reference point of selected wells shall be determined by a  
10 surveyor prior to production. Each well to be monitored for  
11 production shall be equipped with a totalizing flowmeter reading in  
12 gallons per minute for pumping rate and in gallons per minute, or  
13 cubic feet, for total quantity pumped.

14 7. All well sounding measurements shall be taken with a  
15 sounding device approved by both parties. The sounding device shall  
16 be calibrated at the start of the program and recalibrated at least  
17 every six (6) months thereafter. Each production well shall be off,  
18 if possible, at least two (2) hours prior to sounding for a static  
19 level. The recovery time should be consistent for all readings  
20 taken at a given well. Well measurements shall be taken at the same  
21 time of the day and date of the month, insofar as possible. Any  
22 deviation from the regular monitoring schedule shall be so noted on  
23 the recording form. Water quality samples shall be taken from  
24 production wells and the method of sampling shall be consistent for  
25 all wells sampled. All laboratory testing shall be accomplished by  
26 the same firm, if possible. Samples shall be tested according to  
27 the latest requirements of Title 22 of the California Domestic Water  
28 Quality and Monitoring Regulations and other applicable regulations.

1 The frequency of monitoring shall be in accordance with Exhibit "C"  
2 to this Judgment, as set forth herein. HDWD and BDVWA shall provide  
3 to each other copies of all available historical well data,  
4 including static and pumping water levels, pumping quantities and  
5 water quality reports, and each party shall maintain identical data  
6 bases in a mutually-agreed format.

7 8. HDWD and BDVWA shall be responsible for the submission to,  
8 and evaluation of, monitoring data by, their respective consultants.  
9 Within thirty (30) days following the end of each six (6) month  
10 period, each respective consultant shall evaluate the collected data  
11 and make a written report on the progress of the monitoring program,  
12 including recommendations, if any. Copies of these and other  
13 applicable reports shall be distributed by each party to the other  
14 party.

15 9. Criteria which shall initiate immediate environmental  
16 review are identified in Exhibit "D" to this Judgment, as set forth  
17 herein. Any water level or water quality decline exceeding the  
18 criteria shall be cause for a written request for a reduction or  
19 cessation of the pumping of the Mainstream Well. Such request shall  
20 be delivered to the HDWD office and shall be documented with  
21 supporting data.

22 10. HDWD shall reduce pumping in the Mainstream Well to an  
23 amount not to exceed one (1) acre-foot per twenty-four (24) hour  
24 period within forty-eight (48) hours of receiving a written request  
25 from BDVWA. HDWD shall maintain the reduced pumping level until the  
26 general managers of HDWD and BDVWA, and their designated  
27 consultants, have reviewed collected data, met in conference to make  
28 recommendations, and have reached agreement regarding the future

1 operations of the well. If HDWD and BDVWA are unable to agree on a  
2 course of action within thirty (30) days from the date of the  
3 original request, reduced production in pumping shall continue and  
4 the matter shall be submitted for arbitration by an independent  
5 consultant, as provided in paragraph 13 of this Judgment.

6 11. BDVWA shall, if so requested in writing by HDWD, replace  
7 water production lost from the Mainstream Well during the period of  
8 reduced pumping, said replacement not to exceed six (6) months, at  
9 a price per acre-foot comparable to that then currently paid by HDWD  
10 for the lost production.

11 12. BDVWA and HDWD shall each designate the consultant to be  
12 retained to evaluate the data from the monitoring program. Such  
13 consultant shall remain the primary consultant of the party during  
14 the time this Judgment is in effect, unless notification of a change  
15 is provided in writing.

16 13. With respect to paragraph 10 of this Judgment, consultants  
17 for HDWD and BDVWA shall recommend an independent arbitrator who  
18 shall be capable of making proper evaluation of the data, and he  
19 shall provide recommendations on corrective action, if any. Said  
20 arbitrator will be retained to examine the data and reports of the  
21 consultants and make a binding determination on the impacts of the  
22 data and impose the most effective corrective action, if any. If  
23 the respective consultants of HDWD and BDVWA are unable to agree on  
24 a designated arbitrator within a forty-five (45) day period from the  
25 date of the original request, an arbitrator shall be appointed in  
26 accordance with the California Arbitration Act, Sections 1280  
27 through 1294.2 of the Code of Civil Procedure. At any time  
28 following implementation of the arbitrator's decision either party

1 may request a conference as between the general manager of HDWD and  
2 BDVWA and their respective designated consultants, to reach  
3 agreement on a proposed modification or elimination of the  
4 corrective action imposed by the arbitrator. If the general  
5 managers and the designated consultants are unable to arrive at a  
6 mutually acceptable solution, the parties shall again proceed in  
7 accordance with this paragraph 13.

8 14. Program costs, other than in-house manpower, designated  
9 consultants and the support thereof, incurred by the parties  
10 relating to the program (survey, sampling, laboratory, arbitration,  
11 etc.), shall be shared equally by the parties.

12 15. The program shall be ongoing and may be expanded or  
13 terminated by the unanimous consent of the parties.

14 16. Each party shall indemnify, hold harmless and assume the  
15 defense of the other party, its officers, agents, employees, and  
16 elective boards, and each party shall pay all court costs and  
17 reasonable attorneys fees relating thereto, in any action, with  
18 respect to a claim, loss, damage or injury, asserted by a third  
19 party against the party entitled to indemnification under this  
20 Judgment, and arising out of a negligent act, error or omission, or  
21 wilful misconduct, of an employee or agent of the party whose  
22 actions under this Judgment gave rise to such third party claim.

23 17. Any notice, tender or delivery to be given hereunder by  
24 either party to the other, shall be effected by personal delivery in  
25 writing or by registered or certified mail, postage prepaid, return  
26 receipt requested, and shall be deemed communicated as of mailing or  
27 in case of personal delivery, as of actual receipt. Mailed notices  
28 shall be addressed as set forth below, but each party may change its

1 address by written notice in accordance with this paragraph 17.

2 TO: HI-DESERT WATER DISTRICT  
3 6955 Old Woman Springs Rd.  
4 Yucca Valley, CA 92284  
5 Attention: General Manger

6 TO: BIGHORN-DESERT VIEW WATER AGENCY  
7 Post Office Box 3838  
8 1720 North Cherokee Trail  
9 Landers, CA 92285  
10 Attention: General Manager

11 18. Other than those disputes which shall be arbitrated under  
12 paragraph 13 of this Judgment, any dispute or controversy arising  
13 out of, under, or in connection with, or in relation to, this  
14 Judgment, or the breach thereof, shall be submitted to arbitration  
15 in accordance with the following procedures:

16 A party desiring arbitration ("First Party") shall give  
17 written notice to the other party ("Second Party") containing a  
18 general description of the controversy to be submitted to  
19 arbitration and designating by name and address three proposed  
20 arbitrators acceptable to the First Party, each of whom has agreed  
21 to act as arbitrator, if selected. If the Second Party agrees upon  
22 one of the three proposed arbitrators, the Second Party shall so  
23 advise the First Party in writing within ten (10) business days of  
24 such written notice by the First Party.

25 The arbitrator selected shall promptly give written notice  
26 of the arbitration hearing, which shall take place within sixty (60)  
27 days of the date that is selected by the arbitrator. The  
28 arbitration hearing shall take place at a location mutually  
agreeable to the parties, but within San Bernardino County,  
California.

1           If the Second Party fails to agree to the selection of one  
2 of the three proposed arbitrators within the ten (10) business day  
3 period, an arbitrator shall be appointed in accordance with the  
4 California Arbitration Act, Sections 1280 through 1294.2 of the Code  
5 of Civil Procedure.

6           The cost of the arbitration shall be paid by the parties  
7 equally. Except as otherwise provided by this Judgment, the  
8 arbitration shall be conducted and enforced in accordance with the  
9 provisions of the California Arbitration Act, Sections 1280 through  
10 1294.2 of the Code of Civil Procedure.

11           19. Full jurisdiction, power and authority is retained and  
12 reserved by the Court for the purpose of enabling the Court, upon  
13 application of either HDWD or BDVWA by motion and upon at least  
14 thirty (30) days notice thereof, and after hearing thereon, to make  
15 such further or supplemental orders or directions as may be  
16 necessary or appropriate for the construction, enforcement or  
17 carrying out of this Judgment in a case where a dispute arises which  
18 cannot be resolved by the parties by arbitration. The responding  
19 and/or defending party who is determined to be the prevailing party  
20 in any such hearing shall be entitled to recover as costs upon the  
21 conclusion of such hearing all attorneys fees or other costs  
22 actually incurred in connection with resolving the dispute by the  
23 making of such motion and the hearing thereon.

24           20. The effective date of this Judgment is the date of its  
25 filing.

26           21. All parties shall bear their own costs of suit and their  
27 own attorneys fees.

28       ///

1           22. Exhibits "A" through "D" to this Judgment are made a part  
2 hereof and are set forth in the following pages of this Judgment.

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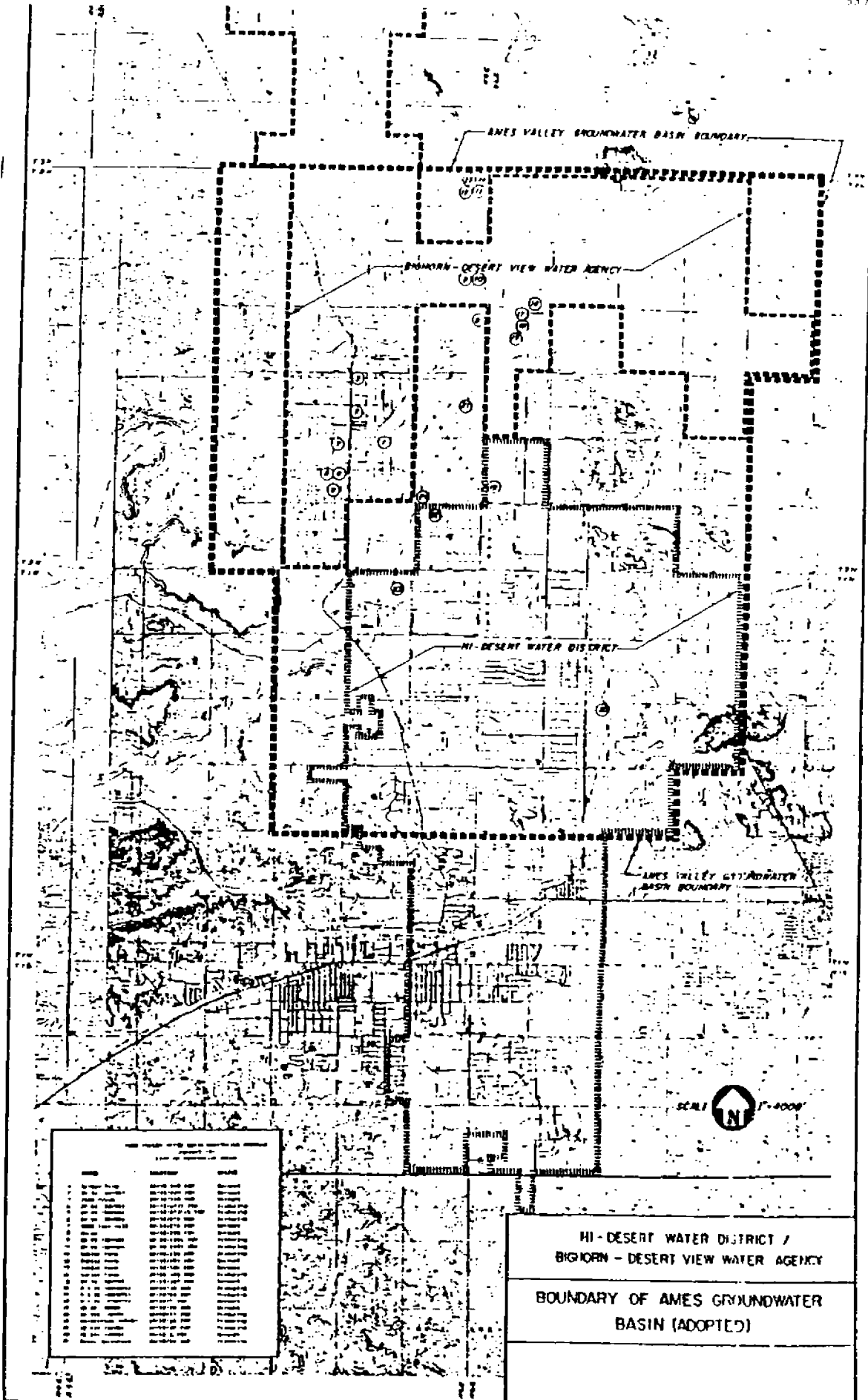
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**EXHIBIT "A"**

**AMES VALLEY WATER BASIN MONITORING PROGRAM  
LEGAL BOUNDARIES OF THE AMES VALLEY WATER BASIN  
(MAP ATTACHED)**

The boundaries of the Ames Valley Water Basin, for the purposes of this monitoring program, shall be as follows: Township 1 North, Range 5 East, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, and 24; Township 1 North, Range 6 East, Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, and 21; Township 2 North, Range 5 East, Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; Township 2 North, Range 6 East, Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 18, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; all located within San Bernardino County.



## EXHIBIT "B"

AMBS VALLEY WATER BASIN MONITORING PROGRAM  
LIST OF MONITORING WELLS

	<u>OWNER</u>	<u>LOCATION</u>	<u>STATUS</u>
1			
2			
3			
4			
5			
6	Archie King	2N/5E/26B, SBM	Dormant
7	DV #1 (BDVWA)	2N/5E/23M, SBM	Dormant
8	Joan Hayes	2N/5E/23D, SBM	Dormant
9	DV #2 (BDVWA)	2N/5E/27J1, SBM	Producing
10	DV #3 (BDVWA)	2N/5E/27J01B, SBM	Producing
11	DV #4 (BDVWA)	2N/5E/27R, SBM	Producing
12	USGS Test Well	2N/5E/27A, SBM	Dormant
13	Moran	2N/5E/13A, SBM	Dormant
14	BH #26 (BDVWA)	2N/5E/12B1, SBM	Producing
15	BH #77 (BDVWA)	2N/5E/12B2, SBM	Producing
16	Gubler Farm	2N/5E/1K1, SBM	Producing
17	Gubler Farm	2N/5E/1K2, SBM	Dormant
18	Gubler Farm	2N/5E/1G1, SBM	Dormant
19	Gubler Farm	2N/5E/1H1, SBM	Producing
20	BH #1 (BDVWA)	2N/6E/18P, SBM	Dormant
21	W-1 #1 (COUNTY)	2N/5E/18, SBM	Producing
22	W-1 #2 (COUNTY)	2N/6E/18, SBM	Producing
23	W-1 #11 (COUNTY)	2N/6E/7, SBM	Dormant
24	HD #6 (HDWD)	2N/6E/10, SBM	Dormant
25	HD #10 (HDWD)	1N/6E/17, SBM	Producing
26	MAINSTREAM (HDWD)	2N/5E/24, SBM	Producing
27	HD #20 (HDWD)	2N/6E/36, SBM	Producing ✓
28	HD #21 (HDWD)	2N/5E/2, SBM	Dormant
	Patty Karawczyk	2N/5E/25, SBM	Producing ✓?

## EXHIBIT "C"

AMES VALLEY WATER BASIN MONITORING PROGRAM  
WELL MONITORING FREQUENCY

<u>TIME INTERVAL</u>	<u>GROUNDWATER LEVELS</u>	<u>GROUNDWATER QUALITY</u>	<u>GROUNDWATER PRODUCTION</u>
0 to 15	Every 5 Days	1st Day Only	Daily
16 to 30	Every 7 Days	Day 30	Daily
31 to 90	Every 14 Days	Day 90	Daily
Over 91	Monthly	Annually	Daily

NOTES:

1. Time interval is in number of days from the start of production from the Mainstream Well.
2. Static groundwater levels apply to all monitoring wells. Pumping levels on production wells should be noted at least once monthly, where possible.
3. Groundwater quality is applicable to production wells only. Production wells located in pairs shall be considered a single wellfield and water samples shall be rotated between each.

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EXHIBIT "D"

AMES VALLEY WATER BASIN MONITORING PROGRAM  
CRITERIA FOR IMPLEMENTING ENVIRONMENTAL REVIEW

Cumulative Water Level Decline in Feet over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Production Wells	7	8	9	10	11
Other Wells	2	3	3	3	4

Cumulative Water Quality Decline in Percent over Time Period:

	<u>2 Mo.</u>	<u>3 Mo.</u>	<u>6 Mo.</u>	<u>9 Mo.</u>	<u>+12 Mo.</u>
Fluoride Increase	30	30	30	30	30
TDS Increase	20	20	20	20	20
Alpha Increase	50	50	50	50	50
Other Components	50	50	50	50	50

NOTES:

1. All Criteria is measured relative to values in individual monitoring wells that shall be measured prior to the start of production in the Mainstream Well. These values will constitute the "Baseline Values" for Water Levels and Water Quality. The initial measurements shall be reviewed by the parties for consistency with historical measurements.

Dated: JUN 03 1991

**E. MICHAEL KAISER**

Judge of the Superior Court

24982.00003

JVD

TEA

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**

<b>TITLE:</b> BIGHORN-DESERT VIEW WATER vs. HI-DESERT WATER DISTRICT	<b>DATE &amp; DEPT:</b> 11/8/01 D-3	<b>NUMBER:</b> RIC 211504
<b>COUNSEL:</b> None present	<b>REPORTER:</b> None	
<b>PROCEEDING:</b> RULING ON MOTION FOR RELIEF FROM OR REFORMATION OF CONTRACT AND STIPULATED JUDGMENT		

On July 5, 2001 Hi-Desert Water District ("Hi-Desert") filed a motion for relief from or reformation of contract and stipulated judgment ("Motion"). The Motion was heard on September 20, 2001. Attorneys Eric L. Garner, Jeffrey V. Dunn and Theresa E. Antonucci appeared for Hi-Desert. Attorney James D. Ciampa appeared for Bighorn-Desert View Water Agency ("Bighorn").

The court, having read and considered all of the submitted material and the arguments of counsel, rules as follows:

HISTORY:

In 1991, Hi-Desert and Bighorn entered into a stipulation for judgment. The Judgment, filed on June 3, 1991 ("Judgment"), was preceded by the Ames Valley Water Basin Agreement of January 10, 1991 ("Agreement") and Stipulation for Judgment filed on June 3, 1991 ("Stipulation"). The Judgment concerned Hi-Desert's proposed construction of a new production well on land owned by the Bureau of Land Management in the Ames Valley Water Basin. The proposed well was in an area between Hi-Desert's service area and Bighorn's service area. Bighorn's service area lies generally north of Hi-Desert's service area. The new well constructed as a result of the Judgment is referred to as the Mainstream Well or Well 24.

The California Department of Water Resources and the U.S. Geological Survey use different criteria to describe the geological area identified in the Judgment. The Judgment, Stipulation and Agreement identify the area as the Ames Valley Water Basin ("Basin"). The Basin contains two (2) sub-basins: Pipes and Reche. All recharge to the Reche sub-basin is by subsurface flow across the Pipes barrier. (Lewis, 1972)<sup>1</sup> The estimates of the amount of recharge to the Basin vary dramatically. Hi-Desert admits that the amount of recharge is unknown.

<sup>1</sup>Rasmussen and Associates Report, September 30, 1988

KAISER, Judge

Portillo(re), Clerk

**BIGHORN-DESERT VIEW WATER AGENCY vs.  
HI-DESERT WATER DISTRICT  
RIC # 211504**

**THE MOTION:**

Hi-Desert brings the Motion pursuant to the court's continuing jurisdiction in paragraph 19 of the Judgment, requesting modification of the Agreement and Judgment. Paragraph 19 of the Judgment provides that, the court retain full jurisdiction and authority "to make such further or supplemental orders or directions as may be necessary or appropriate for the construction, enforcement or carry-out of the judgment . . ."

First, Hi-Desert seeks a modification of the Agreement. Hi-Desert wants the Agreement's definition of the "Yucca Mesa Area" expanded to include an additional six-hundred and ninety-two (692) connections ("Unserved Area") located in the Hi-Desert service area.

Second, Hi-Desert asks to strike Section 2.0 of the Agreement and the corresponding portion of the Judgment.

Third, Hi-Desert asks to strike Sections 5.0 and 5.3 of the Agreement and the corresponding portions of the Judgment because these sections represent an unconstitutional delegation of powers vested in Hi-Desert's governing board.

**DECISION:**

At the time Hi-Desert entered into the Agreement, Stipulation and Judgment, Hi-Desert's service area included areas within the Basin and the Warren Basin. Hi-Desert contends that the Unserved Area outside of the Basin was inadvertently omitted from the definition of the "Yucca Mesa Area" in the Agreement. Thus, the Agreement is based upon the parties' mutual mistake of fact or at the very least, Hi-Desert's unilateral mistake.

The Agreement clearly provides, in the recitals, that the intent of the Agreement is to deal with the environmental impact from water extraction in the Basin. (Recital E). Section 2.0 of the Agreement provides that water diverted from wells within the Basin will be used only within the Basin. The legal boundaries of the Basin are set forth in Exhibit "A" to the Agreement.

The Stipulation filed on June 13, 1991 states in part as follows:

" . . . [a]nd with respect to the production of water from the Ames Valley Basin and the use of such water within the basin, as opposed to the exportation of such water and its use outside of that basin."

The Judgment, filed on June 3, 1991 refers to the production of water within the Basin for use within the Basin. The Judgment also provides, "the amount of water pumped by HDWD from the Ames Valley Water basin may be increased, depending on the water needs of property owners within the Ames Valley Water Basin . . ." Exhibit "A" to the Agreement and a map are attached as exhibits to the Judgment. The

\_\_\_\_\_**KAISER**\_\_\_\_\_, Judge

\_\_\_\_\_**Portillo(re)**\_\_\_\_\_, Clerk

**BIGHORN-DESERT VIEW WATER AGENCY vs.  
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map outlines the service areas of Hi-Desert, Bighorn and the Basin boundaries.

Hi-Desert's motion seeks to expand the Agreement's definition of the "Yucca Mesa Area." The term "Yucca Mesa Area" is not used in the Agreement, the Stipulation or the Judgment. The Agreement, the Stipulation and the Judgment are specific in the use of the term "Ames Valley Water Basin." The intent of the parties is clear and precise. The water pumped within the Basin is to be used within the Basin.

In the materials submitted by the parties, there is some reference to the Yucca Mesa alluvial fan and the Yucca Mesa Area. It is not clear from these references that the Yucca Mesa Area includes the Unserved Area. Even if the "Yucca Mesa Area" includes the unserved area, the intent of the Agreement, the Stipulation and the Judgment is clear and unambiguous.

Where both parties to an agreement are mistaken as to a fact so material as to destroy or vitiate the essential basis on which they entered into the agreement, either party may seek rescision or restitution if enforcement would work as a material hardship on him. (1 Witkin, Summary of California Law, (9th ed. 1987) Contracts, §365, et. seq.) The evidence does not support grounds for relief on the basis of mutual mistake.

Hi-Desert contends that it will suffer and it's rate payers will suffer either because of the lack of water or the increased cost of water. This alleged hardship is neither an extreme, unforeseen or unexpected hardship. As far back as 1977 Hi-Desert's need for supplemental water was recognized in the Warren Basin Judgment.<sup>2</sup>

From the date of filing of the petition for writ of mandate, Hi-Desert was on notice that the issues in dispute were, (1) the extraction of water from the Basin; (2) the transport of the water outside the Basin, and (3) the feasibility of using state project water as an alternative. (Writ of Mandate, filed January 23, 1989, ¶20A and 25)

A unilateral mistake of fact involves a misunderstanding about some basic material fact. Unilateral mistakes require some act by the other party. Relief is not available where the mistake is caused by the negligence or error in judgment of the person making the mistake.

The parties signed three documents. The clear and unambiguous language of the three documents precludes a finding of unilateral mistake. Also, the power of the court to exercise its jurisdiction, does not apply to the modification sought by Hi-Desert because no relief sought by Hi-Desert relates to the unreasonable use or waste of water. (Big Bear Municipal Water District v. Bear Valley Mutual Water Co., (1989) 207 Cal.App.3d. 363)

The parties agree that Section 5.3 of the Agreement and Paragraph 12 of the Judgment are an

<sup>2</sup>Exhibit A to the Declaration of Charles Bryant, filed July 5, 2001, pars. 8 and 17.

\_\_\_\_\_  
KAISER, Judge

\_\_\_\_\_  
Portillo(re), Clerk

**BIGHORN-DESERT VIEW WATER AGENCY vs.  
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unconstitutional delegation of their respective governing board's authority and should be stricken.

The court finds as follows:

- 1) The 1991 Judgment was the result of a stipulated agreement by the parties;
- 2) The intent of the parties to the Agreement controlled the interpretation of the terms of the Judgment.
- 3) The parties intended the court to reserve jurisdiction to construct, enforce or carry out the Judgment, not to modify the Judgment to affect the substantive rights of the parties. To strike Section 2.0 of the Agreement and the corresponding portion of the Judgment would be a modification affecting the substantive rights of the parties.
- 4) The court does not have jurisdiction under Article X, Section 2 of the California Constitution.
- 5) The evidence does not support a finding of mutual or unilateral mistake.
- 6) The motion for relief from or reformation of the contract is denied.
- 7) Hi-Desert to prepare an order striking Section 5.3 of the Agreement and Paragraph 12 of the Judgment.

Ruling on the objections to declarations:

1. Bighorn's objections
  - a) Declaration of Martin Stockstill  
sustained
  - b) Declaration of Charles Bryant  
(1) sustained; (2) sustained
2. Hi-Desert's objections
  - a) Declaration of Ruth Riemon  
(8) overruled; (9) sustained; (10) overruled
  - b) Declaration of Andrea Donnelly  
(3) sustained; (4) sustained
  - c) Declaration of Robert Hefner  
(5) overruled; (6) overruled
  - d) Declaration of Philip Johnson  
(1) overruled; (2) overruled
  - e) Declaration of James Ciampa  
(13) sustained
  - f) Stanley Zarahor  
The objections to pars. 3, 4, 5 and 6 are sustained.

\_\_\_\_ KAISER \_\_\_\_, Judge

\_\_\_\_ Portillo(re) \_\_\_\_, Clerk

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- SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
- 4050 MAIN ST RIVERSIDE, CALIFORNIA 92501
- 41002 COUNTY CENTER DR. TEMECULA, CALIFORNIA 92591
- 880 NORTH STATE STREET HEMET, CALIFORNIA 92543
- 505 SO. BUENA VISTA AVE CORONA, CALIFORNIA 91720
- 3547 TENTH STREET, RIVERSIDE, CALIFORNIA 92501
- 155 E. HAYS STREET, BANNING, CALIFORNIA 92220
- 117 S. LANGSTAFF, LAKE ELSINORE, CALIFORNIA 92530

CLERKS' CERTIFICATE OF MAILING

PLAINTIFF: BIGHORN MOUNTAINS WATER AGENCY  
 VS.  
 DEFENDANT: HI-DESERT WATER DISTRICT

Case No. 211504

TO: BEST, BEST, & KRIEGER  
 3750 UNIVERSITY AVENUE  
 SUITE 400  
 RIVERSIDE CA 92501

I, clerk of the above entitled court, do hereby certify I am not a party to the within action or proceeding; that on the date below indicated, I served a copy of the attached RULING[ by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid in the mail at Riverside, California addressed as above.

CLERK OF THE COURT

Dated: 11/08/01

By:   
 ROSE ESPARZA



LAW OFFICES OF  
BEST BEST & KRIGER LLP  
3750 UNIVERSITY AVENUE  
POST OFFICE BOX 1029  
RIVERSIDE, CALIFORNIA 92502

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The Motion for Relief From or Reformation of Contract and Stipulated Judgment (“Motion”) by Hi-Desert Water District came on for hearing on September 20, 2001, at 8:30 a.m. in Dept. 4 of the above-entitled court. Eric L. Garner, Jeffrey V. Dunn and Theresa E. Antonucci appeared on behalf of Hi-Desert Water District, and James D. Ciampa appeared on behalf of Bighorn-Desert View Water Agency.

The Court, having duly considered all documentary and oral evidence in support of and in opposition to the Motion, and good cause appearing therefore:

IT IS HEREBY ORDERED THAT Section 5.3 of the Ames Valley Water Basin Agreement dated January 10, 1991 and Paragraph 13 of the Stipulation for Judgment dated June 3, 1991 are stricken effective as of the Court’s ruling on this matter on November 8, 2001.

DATED: \_\_\_\_\_, 2002

\_\_\_\_\_  
E. Michael Kaiser  
Judge of the Superior Court

LAW OFFICES OF  
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**PROOF OF SERVICE**

I, Theresa G Lamboy declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 3750 University Avenue, Suite 400, P.O. Box 1028, Riverside, California 92502-1028. On March 22, 2002, I served the within documents:

**[AMENDED PROPOSED] ORDER RE MOTION FOR RELIEF FROM OR REFORMATION OF CONTRACT AND STIPULATED JUDGMENT**

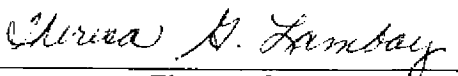
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.
- by causing personal delivery by of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by **United Parcel Service via overnight mail** following the firm's ordinary business practices.

Timothy J. Gosney, Esq.  
James D. Ciampa, Esq.  
Lagerlof, Senecal, Bradley, Gosney & Kruse, LLP  
301 North lake Avenue, 10th Flr.  
Pasadena, CA 91101

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on March 22, 2002, at Riverside, California.

  
\_\_\_\_\_  
Theresa G. Lamboy