

RAMPDOWN

At the Phase 6 trial/prove up of the Judgment and Physical Solution (“Judgment”), several experts were called to discuss the mechanics of the physical solution. In the event you have not reviewed the testimony before the trial court in support of the Judgment, we wanted to provide you with the attached information. The first is the trial transcript of Dr. Dennis Williams. The Stipulating Parties were joint proponents of Dr. Williams’ testimony. Critical portions of Dr. Williams’ testimony are highlighted on pages 25380 and 25384-25385. This testimony corresponds to attached Exhibit numbers 543-44 through 543-46.

As you will see, these exhibits—presented to Judge Komar to graphically illustrate the mechanics of the Rampdown—all show that the Stipulating Parties fully contemplated, and presented uncontroverted evidence, that the Rampdown applies to all “Parties” including the Public Water Suppliers. Specific pumping figures are included for each group of pumpers during the period of the Rampdown. These figures show the Public Water Suppliers having a collective Pre-Rampdown pumping allocation of 40,450.02 afy, including the unused federal reserve right (543-44). In the first year of Rampdown, next year, the Public Water Suppliers are expected to collectively reduce their pumping to 36,807.79 (543-46). This number is reduced in each subsequent year until the Public Water Supplier pumping reaches 18,596.66, including the unused federal reserve right (Id; 543-45). This represents a more than 50% reduction in pumping by the Public Water Suppliers over 5 years.

Consideration of the gradual reduction of Public Water Supplier pumping during the Rampdown Period was a crucial unpinning of the Court’s determination that the Rampdown would not harm the Basin. It is also important to note that these numbers were the only numbers presented to Judge Komar to support the Rampdown. There was no model presented that excluded the Public Water Supplier pumping from the Rampdown.

Further, this evidence belies the suggestion that the Public Water Supplier group had already ramped down prior to the settlement. As you can plainly see, the Public Water Suppliers will now need to reduce pumping from approximately 40k afy to only 18 afy. In the case of Rosamond, it has to reduce current pumping from roughly 3000 afy all the way down to a post-Rampdown Production Right of only 404 afy – a reduction of approximately 85%.

I have also attached a series of exhibits presented by AVEK’s counsel at trial marked 6-AVEK-2 in connection with the testimony of Stipulating Party expert Charles Binder. Slide 5 again shows the Rampdown applying to the Public Water Suppliers, and during his testimony Mr. Binder referenced the Exhibit 3 parties as part of his discussion of the Rampdown.

None of the Stipulating Parties, including, notably, the landowners or public overlayers, introduced any evidence whatsoever supporting the idea that the Public Water Suppliers are not entitled to a Rampdown. Nor did any of the Stipulating Parties object to, or present evidence rebutting, the aforementioned testimony and exhibits. To the contrary, this evidence was jointly presented on behalf of the Stipulating Parties.

Any interpretation of the Judgment will necessarily be based on the evidence that was before the Court. We are not aware of any evidence put before the Court that supports the idea now advanced for the first time that the Public Water Suppliers are not entitled to Rampdown. The Public Water Suppliers are concerned that having the Watermaster advance a “no ramp down” theory that controverts the only

testimony used to support the Judgment could undermine the Judgment by supplying arguments to those parties that are still challenging the Judgment on appeal.

CARRY OVER

Additionally, Exhibits 543-45 and 6-AVEK-2, Slide 5 show the Parties' intention in stipulating to the physical solution to put the Native Safe Yield of the Basin to "the fullest extent of which they are capable." (Const., Art. X, §2.) Both Exhibits as well as Dr. Williams' testimony demonstrate the parties' and the Court's intent that the entirety of the Native Safe Yield be put to beneficial use. As set forth in Section 5.1.4 of the Judgment, the 7,600 afy of federal reserved water right is a portion of the Native Safe Yield. Allowing Public Water Suppliers to pump and carry over the unused federal reserved right would not harm the Basin as the evidence before the Court demonstrates and is consistent with the Constitutional mandate that the water resources of the State be put to beneficial use to the fullest extent of which they are capable.

The Public Water Supplier's right to carry over unused reserved rights is further supported by Section 5.1.4.1 of the Judgment, which provides that any unused federal reserved rights "will be allocated to the Non-Overlying Production Rights holders [e.g., PWS] . . . in the following Year, in proportion to Production Rights set forth in Exhibit 3." First, once the unused water has been "allocated" to the Public Water Suppliers, it is automatically subject to the carry over provision of Section 15.3 which permits carrying over by Public Water Suppliers of all "Production Right[s]." Production Right by definition includes federal reserved rights (i.e., all Native Safe Yield production rights not subject to assessment). (Judgment, §3.5.32.) Second, as a practical matter, all unused reserved rights are carried over, because neither the Watermaster nor the Federal Government would know what amount of reserved water remains unused until an accounting has been done "in the following Year." Carrying over the unused federal reserved right is necessary to allow the Watermaster and the Federal Government to account for the Federal Government's (lack of) water usage, and for the Public Water Suppliers to plan for their water supply. If unused federal reserved right waters are not allowed to be carried over, Section 5.1.4.1 would effectively be rendered null and void, which the law abhors.

For these reasons, the Public Water Suppliers respectfully request that you present this information to the Watermaster Board at its next regular meeting instead of presenting this matter to the Court.

We look forward to our call tomorrow.

Doug

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