MUSICK, PEELER & GARRETT LLP

624 South Grand Avenue, Suite 2000
Los Angeles, California 90017-3383
Telephone (213) 629-7600
Facsimile (213) 624-1376

Cheryl A. Orr (State Bar No. 132379)
c.orr@musickpeeler.com

CALDARELLI HEJMANOWSKI PAGE & LEER LLP
Lee E. Hejmanowski (SBN 166236)
leh@chpllaw.com
Marisa Janine-Page (SBN 199316)
mjp@chpllaw.com
12340 El Camino Real, #430
San Diego, CA 92130
Phone: (858) 764-8106
Fax: (858) 720-6680

Attorneys for Plaintiffs/Petitioners
MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC, a California limited liability company,

Plaintiffs and Petitioners

vs.

IMPERIAL IRRIGATION DISTRICT and DOES 1-10,

Defendants and Respondents

Case No. ECU07980

(Assigned for all purposes to Hon. L. Brooks Anderholt, Dept. 9)

EX PARTE APPLICATION TO ENFORCE JUDGMENT AND TO ENJOIN VIOLATION OF THE JUDGMENT DURING THE PENDING APPEAL; SUPPORTING DECLARATIONS OF CRAIG W. MORGAN AND CHERYL A. ORR

Date: November 15, 2018
Time: 8:30 a.m.
Dept.: 9

Action Filed: November 27, 2013

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs/Petitioners MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC ("Petitioners" or the "Abattis") hereby apply *ex parte* to the Court to enforce the judgment rendered in this action which is currently on appeal and to enjoin Defendant IID, and others acting in concert with it, from violation the judgment, and thus depriving the Abattis from the benefits of the judgment which it obtained from this Court.

This application is based upon the attached Memorandum of Points and Authorities, the Declarations of Craig W. Morgan and Cheryl A. Orr and Exhibits thereto, all pleadings and papers on file herein, and on such further oral and documentary evidence as may be presented at the time of hearing.

Timely notice of this *Ex Parte* Application was provided by telephone and by email to Defendant's counsel. (Orr Decl., ¶ 9, Exh. 20.)

DATED: November 13, 2018

MUSICK, PEELER & GARRETT LLP

By: _____
Cheryl A. Orr
Attorneys for Plaintiffs/Petitioners
MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On August 17, 2017, this Court issued its Statement of Decision in favor of the Abattis and against Imperial Irrigation District ("IID"). The Court made several findings of fact and conclusions of law that are pertinent, including:

- The farmers' equitable and beneficial interest in the water rights of the [Imperial Irrigation District] is appurtenant to their lands and is a constitutionally protected property right. (*Bryant v. Yellen* (1980) 447 U.S. 352, 371, fn. 23.)
- The "no injury" rule bars the transfer of water or water rights that causes injury to an existing legal water user.
- Respondent District's agricultural water users are among the class of legal water users to which the "no injury" rule applies.
- As trustee thereof, Respondent District cannot take perfected water rights from the present owners of the lands to which they are appurtenant and transfer those rights or the appurtenances to other beneficiaries without consideration.
- The only source of water from which Respondent District supplies its users is that derived from the water rights acquired through the agricultural interests in the Imperial Valley.
- Providing water to new water users without vested rights that disproportionately affects existing farmers violated both the "no injury" rule and the "appurtenancy rule" and is contrary to law.
- Effective the date of its decision, Imperial Irrigation District is not empowered to enter into any new contracts committing to the provision of water to any non-domestic or non-agricultural user which guarantees the supply of water during times of shortage in a manner that is inconsistent with the court's findings herein. (Orr Decl., ¶ 2, Exh. 14.)

Based on the findings of fact and conclusions of law in its Statement of Decision, the Court issued its Judgment for declaratory relief on August 25, 2017. The Judgment likewise decrees:

> Effective as of August 15, 2017, Imperial Irrigation District is not empowered to enter into any new contracts committing to the provision of water to any non-domestic or non-agricultural user which guarantees the supply of water during times of shortage in a manner that is inconsistent with the Court's findings in its August 15, 2017 Statement of Decision in this action. (Orr Decl., ¶ 2, Exh. 14.)

IID has appealed the Judgment and the Writ of Mandate and the appeal is presently pending before the Fourth Appellate District, Division One. (Orr Decl., ¶ 2.)

Last year, IID made a motion before this Court for a ruling that the Judgment was stayed as a result of its appeal, which motion was denied because this Court concluded it did not have jurisdiction to decide the issue because of the pending appeal. (Orr Decl., ¶ 3.) As a result, the parties made competing Writ Petitions to the Court of Appeal. (*Ibid.*) The Court of Appeal denied IID's Writ Petition seeking a stay of the Judgment. (*Ibid.*) The Court of Appeal issued an Order expressly directing that the Judgment and the Writ of Mandate issued by this Court are not stayed during the pendency of the appeal. (*Ibid.*, Exh. 14.)

Notwithstanding the Judgment and the Court of Appeal's ruling on the stay issue, IID is poised to adopt a resolution and enter into new contracts with others, including the Metropolitan Water District of Southern California ("MWD"), which will upset the status quo, and violate the Judgment entered by this Court which threatens to deprive the Abattis of the fruits of any victory on appeal.

Specifically, over agricultural water users' objections, IID is on the verge of agreeing to commit to transferring from the Imperial Valley 250,000 acre feet of water away from all district users, including agricultural users, until at least 2027 and perhaps forever by entering into the Lower Basin Drought Contingency Plan ("LBDCP") and related agreements with other entities. (Morgan Decl., Exhs. 9 and 12.) Based on public statements made by federal officials and other parties involved to the negotiations, the Abattis expect that IID will vote later this month or in early December to approve entering into the LBDCP and related agreements, such that the parties can announce the agreements at the annual Colorado River Water Users convention to be held from December 12-14, 2018. (Morgan Decl., ¶ 14.)

IID's making of these new contracts committing to the provision of water outside the district and away from the domestic and agricultural water users within the district will violate the Judgment as recited above. The proposed water transfer violates the "no injury" and appurtency rules and the Abattis are within the class of water users to which the "no injury" rule applies, as are the other farmers in the Imperial Valley. Agricultural and non-agricultural water users will be irreparably harmed by the loss of valuable water for their beneficial uses. In addition, IID appears to be making concessions and recitals in the DCP Agreements, contrary to the Law of the River, that jeopardize the irrigating landowners' enforcement of their vested senior water rights. For example, IID would be agreeing that the federal government can unilaterally cut off deliveries to IID if it believes that IID will over run its limit under the QSA. Yet, under California law, IID's water rights are senior to most other diverters, even in a time of shortage, and, under federal statutes, the federal government is prohibited from interfering with those vested present perfected water rights.

Despite the irreparable harm that IID will be inflicting on the whole Imperial Valley, which disproportionately burdens agricultural users, IID is committed to making this water transfer and potentially commitments to future annual water transfers *without any compensation whatsoever for the water*. The initial water contribution has a value of at least $71 million based upon the cost of the on-farm conservation payments that were made to generate the conserved water that is the subject of the imminent transfer. (Morgan Decl., ¶ 31.) Once the agreements are adopted and entered into, the die will be cast and IID's water will essentially forfeited.

After this water is gone, it will no longer be available for the users within Imperial Valley. Thus, IID's ability to deal with any future overrun of its existing 3.1 million acre fee cap under the Quantitative Settlement Agreements ("QSA") will be in serious jeopardy and farmers will be forced to conserve additional water, the cost of which conservation programs are ultimately imposed on all water users who must pay higher rates for water to fund the conservation programs. (Morgan Decl., Exh. 32.)

II. AN ORDER ENJOINING IID FROM ENTERING INTO THE LB DCP AND RELATED AGREEMENTS IS NECESSARY TO ENFORCE THE JUDGMENT AND PREVENT IID FROM DEPRIVING THE ABATTIS AND OTHER WATER USERS OF THE FRUITS OF THE JUDGMENT

A. An Injunction Preventing Violation of the Judgment During the Pendency of Appeal is Necessary and Appropriate

California Code of Civil Procedure authorizes an injunction to prevent the commission of an act for a limited period of time. (Cal. Code Civ. Proc. § 526, subd. (a)(1).)

An injunction may be granted when it appears from the Complaint and affidavits that the commission of an act would produce waste or great or irreparable injury to a party to the action. (Cal. Code Civ. Proc. § 526, subd. (a)(2).)

An injunction may be granted where it appears that the plaintiff to the action "is doing, or threatens, or is about to do . . . some act in violation of the rights of another party to the action respecting the subject of the action, *and tending to render the judgment ineffectual*." (Cal. Code Civ. Proc. § 526, subd. (a)(3); emphasis added.)

Injunctive relief is also appropriate where "pecuniary compensation would not afford adequate relief" or it would be "extremely difficult to ascertain the amount of compensation which would afford adequate relief." (Cal. Code Civ. Proc. § 526, subd. (a)(4) and (5).)

Injunctive relief may be appropriate where the obligation arises from a trust. (Cal. Code Civ. Proc. § 526, subd. (a)(7).

The Code of Civil Procedure also specifically provides for the grant of an injunction against a defendant to prevent the diversion or diminution of the ordinary flow of water to which the plaintiff claims entitlement pending the conclusion of the litigation. (Cal. Code Civ. Proc. §§ 530 and 532.) The rights of those who possess water rights for irrigation purposes are so greatly protected under California law that an injunction or restraining order may only be dissolved if (i) the defendant makes a showing that it will suffer great damage; and (2) the plaintiff can be fully compensated for any damages suffered by the acts to be enjoined during the pendency of the litigation; and (3) the defendant post a bond fixed by the Court and the order is conditioned upon the defendant's payment of all damages that Plaintiffs and Petitioners may suffer from allowing

the injunction to be dissolved. (Cal. Code Civ. Proc. § 532, subd. (b).) IID could never make such a showing here.

An injunction may issue against an Irrigation District and its Board of Directors to restrain the execution of a contract by the public corporation. (*See, Danley v. Merced Irr. Dist.* (1924) 66 Cal.App. 97, 111.)

Courts have the power, notwithstanding an appeal, to command respect for judgments and obedience to mandates until they are reversed. (*Heinlen v. W.W. Cross* (1883) 63 Cal. 44, 46-47, *quoting Sixth Ave. R.R. Co. v. Gilbert El. R.R. Co.* (1877) 71 N.Y. 430; *see also United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 90.) "It would seem to be preposterous that a party could, by the mere order of the court staying his hands from executing a judgment not yet executed, be deprived of the whole fruit of the judgment by the lawless act of the defeated party pending an appeal, without remedy, that he must stand by, and without possibility of redress, see the subject-matter of the litigation destroyed, so that if he succeeds in affirming the judgment it will be a barren victory." (*Id.*)

"It is well settled that a prohibitory injunction is not stayed by an appeal therefrom while an injunction mandatory in character is automatically stayed by appeal." (*Byington v. Superior Court* (1939) 14 Cal.2d 68, 70 [citations omitted].) Prohibitory injunctions are not stayed in order to preserve the status quo. (*Johnston v. Superior Court* (1957) 148 Cal.App.2d 966, 970.)

The Declaratory Judgment issued by this Court preserves the status quo and is prohibitory. In the Declaratory Judgment, *the Court specifically prohibits IID from* favoring the water needs of other water users, other than domestic, over those of farmers and other agricultural users within the district (Orr Decl., Exh. 15, p. 2, lns. 4-6); and *prohibits IID from entering into any new contracts committing to the provision of water to any non-domestic or non-agricultural user which guarantees the supply to water during times of shortage in a manner that is inconsistent with the Court's findings in its August 15, 2017 Statement of Decision in this action* (*id.*, p. 2, lns. 13-16.)

The California Supreme Court has long held that a successful Petitioner should not be deprived of the benefit of its Judgment by the defendant's refusal to obey the Court's dictates and willfully do what the Court prohibits. (*Heinlen, supra*, 63 Cal. at pp. 46-47 [a stay "**did not**

absolve them from the duty of obedience and permit them to do that which the judgment absolutely prohibited, and the doing of which would, as adjudged by the court, cause irreparable mischief to the plaintiff, or an injury which could not certainly be compensated in damages…"], emphasis added; *see also, United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 90.)

Recognizing the importance of water as a lifeblood of the State's agricultural industry and the need to protect the delivery of water to those with existing water rights, Code of Civil Procedure section 1110a specifically provides:

> If an appeal be taken from an order or judgment directing the issuance of a writ of mandate commanding a party to deliver water, for irrigation purposes, such appeal shall not stay the operation of the order, judgment or writ as to the delivery of such water, *but such water must until the final determination of said appeal be delivered as commanded by said writ . . . .* (Emphasis added.)

IID's intentions are clear: to flout this Court's Judgment declaring that the farmers' equitable water rights are of constitutional stature, are subject to the "no injury" rule, and prohibiting transfer of water away from the farmers in violation of those rights. While IID was previously transferring the water to industrial users within the district without such rights, IID is now proposing to transfer the water needed for farmers' irrigation needs *entirely outside the district* to simply sit in storage to develop the elevation of Lake Mead primarily for the protection of other water users in Nevada and Arizona whose priority rights to that water are substantially more junior than the rights of the irrigating farmers in the Imperial Valley. IID seeks to undermine the Judgment and render Petitioners' victory before Respondent a barren one, whatever the result of IID's appeal.

Although the Court of Appeal has confirmed that the Judgment is not stayed by operation of IID's appeal (Orr Decl., ¶ 3, Exh. 16), IID is unwilling to abide by the Judgment during the pendency of the appeal. An Order enforcing the Judgment and enjoining IID from violating the Judgment by entering into the LB DCP and related agreements during the pendency of the pending appeal is therefore immediately necessary and appropriate.

B. IID's Imminent Approval of Agreements Transferring Water From Farmers in the Imperial Valley Will Violate the Judgment and Threatens to Deprive the Abattis and Other Water Users in the Imperial Valley of Their Rights During the Pending Appeal and Will Cause Irreparable Harm

IID has no respect for the Judgment of this Court or the rights of the farmers in the Imperial Valley. Despite this Court's findings that the farmers, including the Abattis, have a vested equitable interest in the water right of IID which are constitutionally protected and subject to the "no injury" rule, IID continues to insist that it can disregard those rights and simply transfer the water under IID's control to others who do not hold such rights. Despite this Court's declaratory judgment that IID is prevented from making new contracts that commit to providing water to non-domestic and non-agricultural users in violation of the findings of this Court, IID is planning to do just that. Furthermore, IID is making concessions that undermine the senior vested water rights the farmers of Imperial Valley created and jeopardize their continued right to priority on the Colorado River in violation of the "no injury" rule. This Court must act to enforce the judgment during the pendency of the Abattis' appeal.

IID certainly is not demonstrating respect for the farmers in Imperial Valley whose water rights they are transferring for free.[1] For the last year, IID has falsely represented to its constituents that there was no DCP and refused to provide any specific information regarding its negotiations of the LB DCP and what IID was intending to commit to do as part of the DCP. Finally, in August, 2018, IID announced for the first time that it would present "workshops" relating to the DCP. (Morgan Decl., Exh. 9.) The first workshops were held in August, September and October. (Morgan Decl., Exhs. 10 and 11.) These "workshops" were nothing more than presentations about the rationale for IID's decision to enter into the DCP and were not intended to foster any discussion about the wisdom of entering into the DCP or any related side-

[1] Water Code section 22259 provides that IID may enter into a contract "for the lease or sale of any surplus water or use of surplus water not then necessary for use within the district, for use either within or without the district." It does not authorize the Board to give the water away, let alone when the water is needed for irrigation use within the district. (*See, e.g., Allen v. Hussey* (1950) 101 Cal.App.2d 457, 472 [lease of district property for $1 was void]; *see also, Turlock Irr. Dist. v. Hetrick* (1999) 71 Cal.App.4th 948, 951 [agency acts *ultr vires* when it exceeds its scope of statutory authority and the act is void].)

agreements or to consider any debate about whether IID's interests were properly represented in the negotiations relating to the LB DCP and ancillary agreements.[2]

On October 10, 2018, IID first provided its constituents with a draft of the LB DCP and some related documents. (Morgan Decl., ¶ 26, Exh. 12.) The salient term of the LB DCP provide for the contribution by the California entities with rights to use Colorado River water as follows:

> 3. California
>
> a. Lake Mead January 1 elevation projected to be above 1,040 feet and at or below 1,045 feet
>
> In Years when Lake Mead elevation is projected to be above 1,040 feet and at or below 1,045 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 200,000 acre-feet.
>
> b. Lake Mead January 1 elevation projected to be above 1,035 feet and at or below 1,040 feet
>
> In Years when Lake Mead elevation is projected to be above 1,035 feet and at or below 1,040 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 250,000 acre-feet.
>
> c. Lake Mead January 1 elevation projected to be above 1,030 feet and at or below 1,035 feet

[2] For example, Kevin Kelley, the General Manager of IID, has no business, engineering or law degree. He has an undergraduate music degree and is a former journalist, who served as an editor for the IV Press, before assuming the role of the head of IID's public affairs office in 2006. (Orr Decl., ¶ 4, Exh. 17.) Yet, he became the General Manager in 2011, and is managing the largest irrigation district in the country, despite the absence of the education or training necessary to evaluate the hydrologic studies underlying the LB DCP and related agreements, or to negotiate the complex legal agreements among the various parties as necessary to protect IID's interests, as opposed to bending to the will of the United States and other more skilled and knowledgeable negotiators for other parties who possess much more junior rights, but are securing more favorable terms than IID, one of the most senior and largest rights holder in the Colorado River. Deputy General Counsel, Joanna Smith-Hoff, has only been admitted to the State Bar since 2006. (Orr (Orr Decl., ¶ 5.) Board President James Hanks is a retired school superintendent with experience in education, not water rights, water law, hydrogeology or engineering. (Orr Decl., ¶ 6, Exh. 18.) Attorney Craig DuMars, who is providing the primary legal advice to IID with respect to the DCP is not even licensed to practice law in California, is familiar with the law of New Mexico, which State's water law is different than California. (Orr Decl., ¶ 7.) Such facts indicate the farmers are being sold down the river by a team that simply does not have the gravitas to negotiate on behalf of IID and its constituents.

In Years when Lake Mead elevation is projected to be above 1,030 feet and at or below 1,035 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 300,000 acre-feet.

d. Lake Mead January 1 elevation projected to be at or below 1,030 feet

In Years when Lake Mead elevation is projected to be at or below 1,030 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 350,000 acre-feet.

(Morgan Decl., ¶ 26.)

In contrast to these contributions, under the 2007 Interim Guidelines, California users were not required to make any contributions to Lake Mead, but only Nevada and Arizona, the users with the lowest priority to take Colorado River water were required to make contributions. (Morgan Decl., Exh. 1.) IID's portion of California's contributions is not identified in the LB DCP. During the August 28, 2018 and October 9, 2018 workshops, IID represented that it would only be required to make a one-time contribution under the agreement of 250,000 acre-feet of water that IID has already conserved and which is in storage, in part in MWD reservoirs and in part in Lake Mead. (Morgan Decl., ¶ 28.)

On November 9, 2018, IID first published the Agreement Between The Metropolitan Water District Of Southern California And Imperial Irrigation District Apportioning Contributions To Lake Mead For Drought Contingency Plan Implementation (the "MWD/IID Agreement") and Amendment No. 2 To The California Agreement For The Creation And Delivery Of Extraordinary Conservation Intentionally Created Surplus on its website. The MWD/IID Agreement confirms that IID will be responsible for transferring 250,000 acre-feet to Lake Mead as a contribution to elevation building. (Morgan Decl., ¶ 29.)

IID withheld disclosure of the IID-MWD Agreement for as long as possible to limit the ability of the public to conduct a meaningful review of the agreement and provide public comment on it before IID votes to approve it before the December Colorado River Water Users Convention. IID's conduct that borders on contempt must be stopped before it is too late. The remedy of contempt will not protect the Abattis and the Imperial Valley community.

IID delayed disclosure of the side-agreement with MWD because it the draft agreements discloses that IID has negotiated away the Imperial Valley water rights for lack of any compensation and for no other valuable consideration, such as the assistance of the State and other California Colorado River water users' assistance in providing water for remediation of the Salton Sea or treatment of its contribution of conserved water as conserved water for which IID can receive credit in the future against overruns under the Inadvertent Overrun Payback Policy ("IOPP"). IID's contribution is by far the greatest contribution of any other California user of Colorado River water. Indeed, it is the only party whose contribution of conserved water will not receive credit against its future overruns under the terms of the DCP Agreements.

IID's shameful conduct is intended to ignore the farmers' equitable and beneficial interest in the water right held in trust by the IID and instead deprive agricultural water users of the water they have diverted for agricultural use without regard for their reasonable and beneficial needs, ignoring the Judgment in this case that respects such rights, prevents violation of the "no injury" rule and prohibits IID from making new contracts that violate this Court's findings of fact and conclusions of law.

IID has also failed to consider the environmental consequences to the Imperial Valley and the Salton Sea resulting from the LB DCP and related agreements, which commit to transfers of water from IID, as opposed to reductions in allocations to Arizona and Nevada under the 2007 Interim Guideline. (Morgan Decl., ¶ 32.) Failing to protect the present perfected water rights of the Imperial Valley threatens a host of untoward environmental consequences that IID is simply ignoring in a "bull rush" of the LB DCP to final approval over the farming community's vociferous objections. These environmental consequences could include losses to the local agricultural economy and reductions in flows to the Salton Sea, which correspondingly threatens wildlife habitat and air quality. (Morgan Decl., ¶ 32.) IID is not acting as the faithful steward of its water rights in its trust relationship with the farmers of Imperial Valley.

Without an order enforcing the Judgment and enjoining IID from making the LB DCP and the related side agreements, IID is depriving the Court of Appeal from its jurisdiction on appeal and depriving the Abattis from the fruits of their victory before this Court.

If IID can ignore the farmers' equitable and beneficial interests in the water right of the Imperial Valley and make these new contracts guaranteeing to transfer water to Lake Mead to be held in storage until 2057, for a period of twenty-nine years, the Abattis' victory in this Court will be for naught. The farmers' valuable water rights will be taken without compensation. Worse, under the terms of the LB DCP, IID will lose 10% of the amount of the water it contributes to account for evaporation and other loss and, beginning in 2017, IID will be required to lose a further 3% of its stored water as a surcharge for the "privilege" of storing its contribution of water at Lake Mead that it is not permitted to remove until after December 31, 2057 and only if the elevation at Lake Mead is above 1025 feet. (Morgan Decl., Exh. 19, Exhibit 1, pp. 6 and 9.)

Although the LB DCP provides that contributions to Lake Mead may be recovered by California contributors on an annual basis after the expiration of the LB DCP in 2027, this assumes that any of IID's contributed water remains after taking into loss and surcharge assessments and that the elevation of Lake Mead is high enough to permit such recovery. To the extent that IID is in possession of the hydrological studies extrapolating the likely elevation of Lake Mead after 2027, IID has failed to share that information with the public. The slideshow created for public consumption at the October 9, 2018 workshop suggests that the current studies do not project a recovery in Lake Mead elevations after 2027 under most hydrologic scenarios. (Morgan Decl., ¶ 30.)

C. Good Cause Exists for this Ex Parte Application, As Opposed to a Noticed Motion

Good cause exists for the making of this ex parte application for relief, as opposed to a noticed motion. As discussed above and supported by the attached Declaration of Craig W. Morgan, there is no time to seek the relief on a noticed motion.

The United States and other parties to the proposed DCP have made public statements to the effect that the parties intend to approve the DCP and related documents by the end of November, or no later than December 11, 2018. (Morgan Decl., ¶ 14, Exhs. 9, 12.) The annual Colorado River Water Users Association meeting is scheduled for December 12-14, 2018. (*Ibid*.) The DCP was a prominent subject of discussion at last year's annual meeting. (*Ibid*.) A Special

Meeting of the Board was noticed on November 9, 2018 to take place on November 14, 2018, before the Board's regularly scheduled meeting on November 16, 2008. The agricultural community within the district believes that the Board will put the LB DCP and the related side-agreement with the MWD up for a vote of approval at a Special Meeting or the next regular meeting of the Board in order to obtain approval of the LB DCP before the commencement of the December 12, 2018 annual Colorado River Water Users meeting at which the approved agreements will, no doubt, be promoted as a major accomplishment of the Bureau of Reclamation and the various water districts participating in the agreements. (*Ibid.*)

As the foregoing arguments evidence, relief on an ex parte basis is the only viable means of enforcing the Judgment and preventing IID from making the contracts that violate the Court's Judgment and its findings in its Statement of Decision.

III. CONCLUSION

This Court should act immediately to grant this ex parte application to enforce the Judgment entered by this Court in this action and which is presently on appeal and which the Court of Appeal has already ordered is a prohibitory injunction which is not stayed by IID's appeal. The Court should enjoin, during the pendency of IID's appeal, the making of the new contracts, including the LB DCP and all related contracts, including the side-agreement with the MWD, which commit the transfer of water from IID to Lake Mead, outside the district, and away from the irrigating landowners' of the district who have the equitable and beneficial right to the use of that water for irrigating their lands within the district and which undermine the irrigating landowners' vested senior rights in violation of the "no injury" rule in favor of more junior rights holders and the federal government.

DATED: November 13, 2018

MUSICK, PEELER & GARRETT LLP

By: _____

Cheryl A. Orr
Attorneys for Plaintiffs/Petitioners
MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC

DECLARATION OF CRAIG W. MORGAN

I, Craig W. Morgan, declare as follows:

1. I am the president and principal engineer of Avalex Inc., an environmental and civil engineering consulting firm with its principal office in South Lake Tahoe, California. I hold a Bachelor of Science degree in Civil Engineering from Colorado State University, Fort Collins and a Master's in Business Administration degree from San Diego State University. I have over thirty years of experience in the field of water resources engineering and am a licensed professional civil engineer in the states of California and Nevada.

2. I have personal knowledge of the matters set forth herein, and, if called as a witness, could and would testify competently to the facts state herein. As to any comments not based on personal knowledge, I make them on information and belief.

3. My firm and I were retained by Mike Abatti in 2013 to help evaluate the impacts of the Imperial Irrigation District's ("IID's") 2013 Equitable Distribution Plans ("EDPs") on farming operations in the Imperial Valley and to assist with his litigation efforts. Prior to this current retention, I was also previously retained by Mr. Abatti beginning in 2004 to help evaluate the impacts of the 2003 Quantification Settlement Agreements ("QSA") on farming operations in the Imperial Valley and other related matters as well as to also assist with his litigation efforts in those matters. Since 2004, I have personally spent thousands of hours analyzing data, reports, correspondence, and other pertinent materials related to the Imperial Irrigation District's use of Colorado River water including the 2003 QSA, the 2003 Inadvertent Overrun and Payback Policy and various other "Law of the River" documents.

4. On December 13, 2007, the Secretary of the Interior entered its Record of Decision on the *Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead* ("*2007 Interim Guidelines*") after consulting with the seven Colorado River Basin States[3] and their water users. The purpose of these interim guidelines

[3] Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

was to address future reservoir operations and water distribution within the Colorado River basin through the year 2026 in view of the "eighth year of drought" on the Colorado River. Under these guidelines, stepped reductions in water apportionments to Arizona and Nevada would occur if elevations in Lake Mead declined below levels of 1,075 feet, 1,050 feet, and 1,025 feet. California water contractors, however, as senior water rights holders would continue to receive full access to the state's 4.4 million acre-foot entitlement with no reductions even if elevations in Lake Mead dropped below 1,025 feet. Attached as Exhibit 1 is a true and correct copy of the *2007 Interim Guidelines*.

5. In December 2012, the Bureau of Reclamation ("Reclamation") and the seven Basin States completed the *Colorado River Basin Water Supply and Demand Study*, which identified and evaluated future imbalances in water supply and demand in the Colorado River System through the year 2060. This study developed and analyzed options and strategies to resolve these imbalances. One of the conclusions of the study was that without further actions, there would likely be significant long-term imbalances in future water supply and demand. Options identified to address these imbalances included augmentation of the river system and increased agricultural and municipal water conservation.[4]

6. Due to continuing drought conditions in the Upper Colorado River Basin in 2013, the Secretary of Interior in her 2014 Annual Operating Plan ("AOP") for the Colorado River System projected a release of only 7.48 million acre-feet from Lake Powell in 2014 as opposed to an 8.23 million acre-feet release. This was a significant reduction in flows to the Lower Basin. This condition prompted Colorado River Basin water users to pursue means of maintaining elevations in Lake Powell and Lake Mead to prevent triggering reductions in flows to Arizona and Nevada under the *2007 Interim Guidelines*.

7. On July 30, 2014, Reclamation, Southern Nevada Water Authority ("SNWA"), Central Arizona Water Conservation District ("CAWCD"), Metropolitan Water District of

[4] The complete *Colorado River Basin Water Supply and Demand Study* document is available at https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/index.html

Southern California ("MWD"), and Denver Water entered into an agreement for a *Pilot Program for Funding the Creation of Colorado River System Water Through Voluntary Water Conservation and Reductions in Use* to help stem continued declines in Lake Powell and Lake Mead elevations. This program provided for the voluntary conservation of water by Colorado River water users with the amounts of conserved water retained in the river system to bolster reservoir elevations for the benefit of all water users. Later, on December 10, 2014, Reclamation, SNWA, CAWCD, MWD, Arizona Department of Water Resources ("ADWR"), Colorado River Board of California, and the Colorado River Commission of Nevada entered into a *Memorandum of Understanding* ("*MOU*") to create additional "Protection Volumes" of water in Lake Mead to reduce the risks of reaching critical reservoir elevations that would trigger cutbacks in water allocations. The goal of MOU was to create 740,000 acre-feet of additional volume for Lake Mead by the end of 2017. Unlike the July 30, 2014 Pilot Program, waters conserved under this program were envisioned to be retained for the future use of the contributing municipal agencies when conditions permitted.

8. During years 2015 and 2016, representatives from the Lower Basin States and Reclamation continued discussions regarding opportunities to decrease the likelihood that Lake Mead would continue to drop. On September 20, 2016, IID staff made a presentation to the IID Board describing the status of these drought contingency planning efforts. Within this presentation it was noted that California water agencies were proposing to contribute conserved water to Lake Mead for storage if elevations dropped below 1,040 feet with such waters being recoverable under certain conditions. Noted in the presentation was the possibility that water contributions under this program might not be fully recoverable with as much as 75% of the contributed water being lost. This proposal was a significant departure from the position outlined in the *2007 Interim Guidelines* whereby California's water contractors did not suffer limitations in their access to water when elevations in Lake Mead dropped. No mention was made as to any specific amounts of water that California contractors collectively or IID individually would be expected to contribute as part of a Lower Basin Drought Contingency Plan ("LB DCP"). Attached as Exhibit 2 is a true and correct copy of the September 20, 2016 staff presentation.

9. While the details as to California's collective and IID's individual expected contributions to a LB DCP were absent in IID's September 20, 2016 presentation, the MWD shortly thereafter in an information item at their November 8, 2016 Board of Directors Water Planning and Stewardship Committee Meeting provided specific details. MWD's presentation identified stepped reductions by California contractors of 200,000 acre-feet, 250,000 acre-feet, 300,000 acre-feet, and 350,000 acre-feet at elevations 1,045 feet, 1,040 feet, 1,035 feet, and 1,030 feet respectively. IID's expected reductions were identified as 60% of the total California contributions. Reductions could only be made by implementing extraordinary conservation activities that would be accounted as DCP storage amounts. The drought plan as presented by MWD allowed an agency to temporarily access DCP storage amounts but required that an agency return water to the DCP account within a year. Water reductions (storage contributions) would be fully recoverable through 2057 if Lake Mead elevation increased to 1,110 feet. MWD would have the option to participate on an equal cost-share basis with IID in mutually agreed to conservation programs to assist in generating the conserved water. However, IID would be responsible for any environmental mitigation required to implement the conservation programs. Attached as Exhibit 3 is a true and correct copy of the November 8, 2016 "Overview of proposed Lower Colorado River Basin Drought Contingency Plan" information item presented at the MWD meeting.

10. Concurrent with Colorado River drought contingency planning efforts within the seven basin states on the U.S. side of the border, efforts were also made towards drought program participation with the country of Mexico. On September 27, 2017, the International Boundary and Water Commission for United States and Mexico executed Minute 323 to the 1944 United States-Mexico Treaty on Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande ("1944 Treaty") entitled "Extension of Cooperative Measures and adoption of a Binational Water Scarcity Contingency Plan in the Colorado River Basin." This Minute Order provided for the participation of Mexico in drought sharing responsibilities together with commitments of U.S. money to Mexico to implement conservation programs on the Mexican side of the border.

11. The progress made towards adopting drought contingency plans on the Colorado River Basin and the adoption of Minute 323 were discussed at the Colorado River Water Users

Association annual conference in Las Vegas, Nevada in December 2017, which I attended. In her address on December 15th, newly appointed Bureau of Reclamation Commissioner Brenda Burman noted the urgency in completing a drought contingency plan in 2018. Attached as Exhibit 4 is a true and correct copy of her remarks at the conference as published on the Bureau of Reclamation's website.

12. On January 30, 2018, I appeared before the IID Board of Directors at their regularly scheduled meeting and inquired as to the status of the drought contingency plan. I noted that Coachella Valley Water District and MWD had already made presentations on the terms of the draft LB DCP as it had been envisioned at that time and requested that IID do the same. Attached as Exhibit 5 is a true and correct copy of the January 30, 2018 Board Meeting Minutes as published on IID's website.

13. Another inquiry was made of the IID Board by members of the public in early 2018 to obtain information on the LB DCP. At the Board's February 6, 2018 meeting, Mr. Tom Havens asked the Board if he could obtain a copy of the draft LB DCP term sheet. IID General Manager Kevin Kelley acknowledged that a term sheet did exist, but declined to provide a copy to Mr. Havens. Director Bruce Kuhn noted that, notwithstanding any presentations that may have been made by other water agencies, nothing had been agreed to with respect to a DCP. Attached as Exhibit 6 is a true and correct copy of the February 6, 2018 Board Meeting Minutes as published on IID's website.

14. In a U.S. Bureau of Reclamation press release dated May 9, 2018, Commissioner Burman again restated her commitment to have the basin states adopt drought contingency plans by the end of 2018. The press release quoted Commissioner Burman as saying "I'm calling on the Colorado River basin states to put real – and effective – drought contingency plans in place before the end of this year." The May 9, 2018 press release is published on the Bureau of Reclamation's website at https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=62170. Enacting the agreements in early December before the end of the year would allow the parties to announce the completion of the agreements as a major accomplishment at the annual Colorado River Water Users convention to be held in Las Vegas on December 12-14, 2018.

15. Two weeks after announcing that the Bureau of Reclamation was requesting that the drought contingency plans be adopted before the end of the year, Commissioner Burman, Lower Colorado River Basin Regional Director Terry Fulp, and Robert Snow with the Department of Interior's Solicitors Office appeared before the IID Board at the Board's May 22, 2018 meeting to present current water conditions on the Colorado River and drought planning concerns. Ms. Burman again restated her request that the drought contingency plan be approved before the end of 2018 – "We need to be talking about what does a drought contingency plan in the Lower Basin look like. We need action this year." Commissioner Burman also noted there was a "very strong possibility" that the Colorado River system might not recover from the drought. The May 22, 2018 Board Meeting Minutes are published on IID's website at https://www.iid.com/Home/ShowDocument?id=17111.

16. Further discussions concerning the formulation of a drought contingency plan were held during IID's June 26, 2018 meeting by members of the public and by individual board members during the public comment discussion period. A few public commenters asked for further details about the DCP plan and one asked if they could get a copy of the draft plan or term sheet. IID Board Directors Bruce Kuhn and James Hanks noted that no DCP had been approved. General Manager Kevin Kelley noted that there was no DCP in place. Directors Kuhn and Norma Galindo noted that they were unaware of there being any draft DCP plan or term sheet. No details were provided by IID Board members or staff concerning the status of negotiations or the nature and terms of the negotiations. Attached as Exhibit 7 is a true and correct copy of the June 26, 2018 Board Meeting Minutes as published on IID's website.

17. At IID's July 10, 2018 Board Meeting, Director Bruce Kuhn asked that a discussion be held at the next IID Board meeting "to see if we can come up with something that would serve as our answer to not a DCP but something that would work similarly." Attached as Exhibit 8 is a true and correct copy of the July 10, 2018 Board Meeting Minutes as published on IID's website.

18. At IID's August 14, 2018 Board Meeting, Kevin Kelley presented an update on DCP negotiation efforts. Mr. Kelley noted that on July 30th IID staff had met with other Colorado

River water users in Utah to discuss the DCP. He also noted that IID would hold a public workshop on the DCP at the Board's August 28th meeting. Mr. Kelley reported there was a new proposal by the Reclamation Commissioner that would call on the junior right holder in California to shoulder more of the risk than the senior, which is IID. Mr. Kelley stated that "In some respects this is an interim step and is not the solution that IID's been endeavoring to negotiate with Metropolitan for two years now, but I can tell you, and I have signaled to the commissioner, that as the general manager, short of the board and the stakeholders vetting and approving a concept like this, I can see a path forward in which California could contribute to a DCP." Attached as Exhibit 9 is a true and correct copy of the August 14, 2018 Board Meeting Minutes as published on IID's website.

19. On August 28, 2018, the IID held the promised workshop to discuss the DCP. IID staff presented the most recent drought condition projections noting that the probabilities of elevations in Lake Mead dropping below elevation 1,075 feet over the next five years were as high as 70% in the year 2022 if water deliveries continued to be operated under the *2007 Interim Guidelines*. The probabilities of Lake Mead dropping below elevation 1,050 feet were as high as 38% and below elevation 1,025 feet as high as 14% in year 2023.

20. IID staff noted during the presentation that under the DCP plan, additional reductions beyond those contained within the *2007 Interim Guidelines* would be required by Arizona and Nevada and now California, with California taking reductions of 200,000 acre-feet per year when Lake Mead elevations dropped below 1,045 feet, 250,000 acre-feet per year when elevations dropped below 1,040 feet, 300,000 acre-feet per year when elevations dropped below 1,035 feet, and 350,000 acre-feet per year when elevations dropped below 1,030 feet. As noted in paragraph 4. above, under the *2007 Interim Guidelines* neither IID nor the other California Colorado River water users are required to reduce their water usage when shortage conditions occur. Rather, water users in Arizona and Nevada bear all the burden of reduced water allocations under the *2007 Interim Guidelines*. Under the DCP, reductions in California water use were to be made by implementing extraordinary conservation activities that would be accounted as storage

"contributions." This program and schedule were the same as that described in MWD's November 8, 2016 DCP presentation as recited above in paragraph 9.

21. IID noted at the workshop, however, that the terms of the prior DCP proposal under which IID was expected to shoulder 60% of the burden had been modified. Mr. Kelley stated that the recent proposal from the Bureau of Reclamation provided for a "slimmed down, more modest plan where IID is concerned. It has the advantage of being basically ready to go because it entails the water IID has already stored. Whether or not this takes the place of the larger deal where we have a bonafide partner who is dedicating a revenue stream to us doing this extraordinary conservation, I think that punts off into the future." IID staff noted that IID had approximately 240,000 acre-feet of water stored primarily in MWD's reservoir and some in Lake Mead at the end of 2017 and that this water could be used for IID's "contributions" to storage in Lake Mead under the DCP. Although no context was provided, Mr. Kelley emphatically stated that "no one should think that storing water at Lake Mead is unsafe, especially for IID." Attached as Exhibit 10 is a true and correct copy of the August 28, 2018 Drought Contingency Planning Process Workshop slideshow presentation as published on IID's website.

22. On October 9, 2018, IID held a second workshop on the DCP. IID staff reviewed Colorado River hydrologic projections and the goals of the DCP. One of the hydrologic projections presented forecast an approximately 55% to 63% probability that Lake Mead water levels under the DCP would be below elevation 1,075 feet in years 2020 through 2026 under both Full Hydrology Conditions (1906-2015) and approximately 55% to 78% probability under Stress Test Hydrology Conditions (1988-2015).

23. IID staff described the DCP agreement framework. A primary "Companion Agreement" and separate Upper Basin and Lower Basin DCP agreements were described. Within the Lower Basin it was noted that a "Legal Agreement" and an Operational "Overlay" Agreement would be provided together with a series of agreements executed within each of the three states: Arizona, California, and Nevada. Within California six agreements were described: 1) an amendment agreement to the existing *2007 Interim Guidelines* Intentionally Created Surplus Exhibit identifying additional conservation measures that each of California's water contractors

were authorized to implement, 2) an amended Intentionally Created Surplus Agreement, 3) an agreement between MWD and IID, 4) an agreement between MWD and Palo Verde Irrigation District, 5) an agreement between MWD and CVWD, and 6) an environmental compliance agreement.

24. The IID staff noted that under the proposed LB DCP, IID would only be responsible for making a one-time contribution of 250,000 acre-feet to satisfy their participation. IID staff noted that the MWD and IID agreement would provide for the transfer of 250,000 acre-feet of IID's stored water to Lake Mead to allow IID to satisfy their contribution to elevation building if needed. If this transferred water was converted to DCP ICS, then a number of significant conditions would be applied with respect to IID's use of this water if elevations in Lake Mead remained below 1,110 feet. The specific details as to how this transfer of water occurred were not provided at the workshop. It was also noted at the workshop that the total amount of conserved water stored within MWD's reservoirs and within IID's current Intentionally Created Surplus (ICS) storage account in Lake Mead would grow to approximately 275,000 acre-feet by the end of 2018.

25. IID noted that the draft Primary Companion Agreement and LB DCP agreement would be released to the public for their review on October 10, 2018. Attached as Exhibit 11 is a true and correct copy of the October 9, 2018 Drought Contingency Planning Process Workshop II slideshow presentation as published on IID's website.

26. On October 10, 2018, IID posted links to the draft Primary Companion Agreement and LB DCP agreement on the agency's website. True and correct copies of each of those agreements are attached collectively as Exhibit 12 hereto. The salient term of the LB DCP provides for the contribution by the California entities with rights to use Colorado River water as follows:

> 3. California
>
> a. <u>Lake Mead January 1 elevation projected to be above 1,040 feet and at or below 1,045 feet</u>
>
> In Years when Lake Mead elevation is projected to be above 1,040 feet and at or below 1,045 feet on January 1, the state of California

shall make annual DCP Contributions in the total amount of 200,000 acre-feet.

b. Lake Mead January 1 elevation projected to be above 1,035 feet and at or below 1,040 feet

In Years when Lake Mead elevation is projected to be above 1,035 feet and at or below 1,040 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 250,000 acre-feet.

c. Lake Mead January 1 elevation projected to be above 1,030 feet and at or below 1,035 feet

In Years when Lake Mead elevation is projected to be above 1,030 feet and at or below 1,035 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 300,000 acre-feet.

d. Lake Mead January 1 elevation projected to be at or below 1,030 feet

In Years when Lake Mead elevation is projected to be at or below 1,030 feet on January 1, the state of California shall make annual DCP Contributions in the total amount of 350,000 acre-feet.

27. The annual and cumulative losses associated with storing water in Lake Mead are also described in the LB DCP. Storage losses include a 10% one-time system charge against new ICS stored apart from DCP ICS "contributions" and an annual charge of 3% beginning in year 2027 and continuing through 2057 against DCP ICS contributions.

28. During the August 28, 2018 and October 9, 2018 workshops, IID represented that it would only be required to make a one-time contribution under the agreement of 250,000 acre-feet of water that IID has already conserved and which is in storage, in part in MWD reservoirs and in part in Lake Mead. However, nothing in the draft LB DCP document acknowledges that one-time contribution or limits IID's contribution in any way. Rather, the agreement provides for annual contributions over the next seven (7) years of at least 200,000 acre-feet and as much as 350,000 acre-feet from all California users of Colorado River Water.

29. On November 9, 2018, IID gave notice of a Special Meeting to be held on November 14, 2018 to discuss the DCP. In connection with that notice, IID published the Agreement Between The Metropolitan Water District Of Southern California And Imperial Irrigation District Apportioning Contributions To Lake Mead For Drought Contingency Plan

Implementation (the "MWD/IID Agreement") and Amendment No. 2 To The California Agreement For The Creation And Delivery Of Extraordinary Conservation Intentionally Created Surplus on its website on November 9, 2018. True and correct copies of each of those agreements are attached collectively as Exhibit 13 hereto. The MWD/IID Agreement confirms that IID will be responsible for transferring 250,000 acre-feet to Lake Mead as a contribution to elevation building.

30. IID staff have not provided any estimates of the quantities of water that they anticipate recovering under the LB DCP contributions or probabilities thereto. The hydrologic projections presented by IID staff at their October 9, 2018 workshop for the years 2020 through 2026 under both Full Hydrology (1906-2015) and Stress Test Hydrology (1988-2015) assuming the adoption of a DCP suggest that the elevations of Lake Mead will likely remain below an elevation of 1,075 feet for years to come, resulting in the depletion of that stored water over time. An analysis of the amounts of the contributed water expected to be lost under the LB DCP over time should be performed to accurately assess the impacts of IID's participation on its operations. If this water is lost or access to the water in a timely manner is precluded, IID will need to conserve additional quantities of water to payback future overruns to their 3.1 million acre-feet entitlement provided under the 2003 Quantification Settlement Agreement in accordance with the terms of the Reclamation's Inadvertent Overrun Payback Policy ("IOPP").

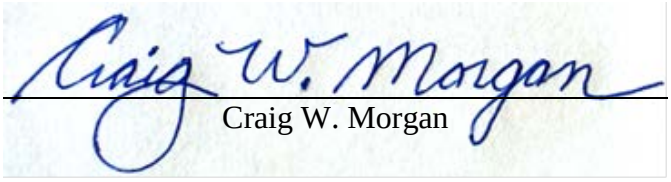
31. The value of IID's 250,000 acre-feet of stored water assuming a replacement cost of $285 per acre-foot (which is the current cost of IID's on-farm conservation program that can be used to create conserved water for storage) equals $71.25 million. The value of that stored water, using the price of conserved water sold to the San Diego County Water Authority under the QSA at $650 per acre foot, is $162.5 million. Either way, if IID is unable to access the 250,000 acre-feet of water contributions made to Lake Mead proposed under the LB DCP, a loss of value measured in the tens or hundreds of millions of dollars would occur.

32. During IID's water conservation advisory board meeting on November 8, 2018, Joanna Smith-Hoff, deputy general counsel for IID noted that the parties to the DCP agreements proposed relying upon the environmental documentation prepared for the *2007 Interim*

Guidelines. Yet, the *2007 Interim Guidelines* did not contemplate any water contributions from California water users, including IID. This would not be an appropriate means of supporting the LB DCP project, since that environmental review did not presume to analyze *any* impacts to the local Imperial Valley community and the Salton Sea. Significant impacts could occur because of the need to implement additional water conservation measures within the district to off-set water storage losses associated with IID's 250,000 acre-feet storage contribution, including fallowing of more farm land within the district. Environmental impacts could include losses to the local agricultural economy and reductions in flows to the Salton Sea, which correspondingly threatens wildlife habitats and air quality. In addition, the costs associated with conservation are ultimately imposed on all water users who must pay higher rates for water to fund the programs.

I declare under penalty of perjury under the laws of the State of California that the foregoing reflects my opinions on the subjects covered and is true and correct as to my own personal knowledge of those opinions and the information I have reviewed and upon which those opinions are based.

Executed this November 13, 2018, at Kailua-Kona, Hawaii.



Craig W. Morgan

DECLARATION OF CHERYL A. ORR

I, Cheryl A. Orr, declare as follows:

1. I am an attorney duly admitted to practice before all the Courts in the State of California. I am a partner with Musick, Peeler & Garrett LLP, attorneys of record for Plaintiffs/Petitioners MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC in this action. I make this declaration in support of Plaintiffs' Ex Parte Application. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would competently testify thereto.

2. A true and correct copy of the Statement of Decision entered on August 15, 2017 in the Abattis' favor against IID by this Court is attached as Exhibit 14. A true and correct copy of the Judgment for declaratory judgment entered in this action on August 25, 2017 is attached as Exhibit 15. IID has appealed the Judgment and the Writ of Mandate this Court issued.

3. Last year, after this Court declined to issue a ruling on the motion brought by IID seeking to confirm that the Judgment and Writ of Mandate were stayed by operation of the IID's appeal, the Abattis and IID both filed Writ Petitions with the Court of Appeal. The Abattis sought an Order that the Judgment and Writ of Mandate were not stayed by the appeal. IID sought a competing ruling and Order that the Judgment and Writ of Mandate were stayed by its appeal. The Court of Appeal issues an Order expressly directing that the Judgment and Writ of Mandate were not stayed by the appeal. A true and correct copy of the Court of Appeal's Order is attached as Exhibit 16.

4. Attached as Exhibit 17 is the official biography of Kevin Kelley, the General Manager of IID, that appears on IID's website. Mr. Kelley has no business, engineering or law degree. I am informed and believe that his undergraduate degree is in music. He is a former journalist, who served as an editor for the IV Press, before assuming the role of the head of IID's public affairs office in 2006.

5. Attached as Exhibit 18 is the official biography of James Hanks, the President of IID's Board, which discloses his educational and professional experience, which is primarily in the field of education.

6. I performed an attorney records search with the State Bar of California for Joanna Smith-Hoff, Deputy Counsel for IID, that appears on IID's website. The State Bar records reflect Ms. Hoff was admitted to practice in June 2006.

7. IID's attorney who provides the primary legal advice relating to the DCP is Charles DuMars. I performed a records search with the State Bar of California and confirmed that Mr. DuMars is not licensed to practice law in California. I have confirmed that he is licensed in New Mexico.

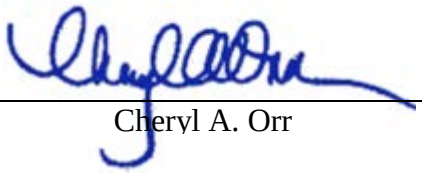
8. On November 7, 2018, I sent a letter to IID on behalf of the Abattis and other farmers expressing their objections to the DCP Agreements and IID adoption of those agreements, citing a variety of objections, including that the act would violate the Judgment in this action. A true and correct copy of that letter is attached as Exhibit 19.

9. On November 13, 2018, at approximately 9:15 a.m., I provided telephonic notice to Jennifer Meeker, Esq., counsel for IID in these proceedings and on appeal, of the Abattis' intentions to make this ex parte application, on November 14, 2018 at 8:30 a.m. in Department 9 of this Court, for an order enforcing the judgment and for an order enjoining IID from approving and/or entering into the Lower Basin Drought Contingency Plan and/or any related agreements as necessary to implement that agreement during the pendency of the appeal from the Judgment and Writ of Mandate issued in this case. I also followed up with an email to Ms. Meeker giving the same notice at 9:19 a.m. A true and correct copy of my email is attached as Exhibit 20. Ms. Meeker indicated IID's counsel would appear to oppose the application. Later, at 10:31 a.m. on November 13, 2018, I advised Ms. Meeker by email that we would be changing the ex parte to take place on November 15, 2018 at 8:30 a.m. A true and correct copy of my subsequent email is attached as part of Exhibit 20. I followed up at approximately 11:43 with a telephone message to Ms. Meeker about the change in the date of the ex parte application. I also spoke at 11:45 a.m.

with Ms. Meeker's assistant, Mitchi, and advised her of the change in the date of the ex parte application from Wednesday, November 14, 2018 to Thursday, November 15, 2018.

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

Executed this November 13, 2018, at Los Angeles, California.



Cheryl A. Orr

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Building, 624 South Grand Avenue, Suite 2000, Los Angeles, CA 90017-3383.

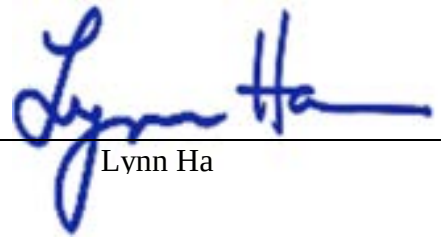
On November 13, 2018, I served true copies of the following document(s) described as **EX PARTE APPLICATION TO ENFORCE JUDGMENT AND TO ENJOIN VIOLATION OF THE JUDGMENT DURING THE PENDING APPEAL; SUPPORTING DECLARATIONS OF CRAIG W. MORGAN AND CHERYL A. ORR** on the interested parties in this action as follows:

Counsel	**Representing**
Fred A. Fudacz, Esq. Jennifer L. Meeker, Esq. NOSSAMAN, LLP 777 S. Figueroa Street, 34th Floor Los Angeles, CA 90017 Email: ffudacz@nossaman.com jmeeker@nossaman.com	Counsel for Defendant and Respondent IMPERIAL IRRIGATION DISTRICT
Lee E. Hejmanowski, Esq. Marisa Janine-Page, Esq. CALDARELLI HEJMANOWSKI PAGE & LEER LLP 12340 El Camino Real, #430 San Diego, CA 92130 Phone: (858) 764-8106 Email: leh@chpllaw.com mjp@chpllaw.com	Plaintiffs and Petitioners MICHAEL ABATTI, TRUSTEE OF THE MICHAEL AND KERRI ABATTI FAMILY TRUST and MIKE ABATTI FARMS, LLC

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address l.ha@musickpeeler.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on November 13, 2018, at Los Angeles, California.



Lynn Ha