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CLERK, U. S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT BY SOUTHERN DISTRICT OF CALIFORNIA  
By *[Signature]* DEPUTY

DEPUTY

ENTERED

IN THE UNITED STATES DISTRICT COURT APR - 6 1966

SOUTHERN DISTRICT OF CALIFORNIA CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]*

SOUTHERN DIVISION

11 UNITED STATES OF AMERICA, )  
12 )  
13 Plaintiff, )  
14 )  
15 v. )  
16 )  
17 FALLBROOK PUBLIC UTILITY DISTRICT, )  
18 a public service corporation of )  
19 the State of California, et al., )  
20 )  
21 Defendants. )

No. 1247-SD-C

MODIFIED  
FINAL JUDGMENT  
AND DECREE

17 The above-entitled cause came on regularly for trial be-  
18 fore the Honorable James M. Carter, United States District  
19 Judge, following remand from the United States Circuit Court  
20 of Appeals for the Ninth Circuit, which directed that this  
21 Court ". . . enter no judgment until the entire suit can be  
22 disposed of at the same date."

23 Because of the complexities of this litigation and the  
24 fact that the physical water resources were located through-  
25 out the watershed, this Court determined that the said mandate  
26 could best be complied with by adjudicating the rights of the  
27 parties to the cause in segments of the watershed involving  
28 limited areas and numbers of defendants and by entering  
29 interlocutory judgments as the trial concerning each such  
30 segment was concluded. Proceeding in this manner, this

1 Court has entered interlocutory judgments as the trial pro-  
2 gressed, each of which concerns a specified area within the  
3 Santa Margarita River watershed, or a limited legal issue  
4 presented by the parties. These interlocutory judgments  
5 expressly provided that they were not final and not operative  
6 until made a part of the final judgment. This Court having  
7 entered orders or interlocutory judgments on all areas within  
8 the watershed and all issues presented for decision, and the  
9 rights to the use of the waters of the Santa Margarita River  
10 stream system having been adjudicated in those interlocutory  
11 judgments, this Court therefore entered its final judgment  
12 and decree on May 8, 1963, whereby the said Interlocutory  
13 Judgments or Orders were listed, and the same, together with  
14 the Findings of Fact and Conclusions of Law attached thereto,  
15 were adopted as the final Findings of Fact, Conclusions of  
16 Law, and Judgment and Decree of the Court. Appeal from said  
17 Final Judgment and Decree was taken to the United States  
18 Court of Appeals. The Court of Appeals, by its decision  
19 dated May 26, 1965, reversed the judgment of this Court as to  
20 the rights of the United States against Vail Company, and re-  
21 manded the cause "with instructions that the final judgment  
22 be appropriately modified to the end that the 1940 state  
23 court decree is reinstated, subject to the rights of Vail  
24 to seek relief from that judgment in accordance with the  
25 views hereinbefore expressed." In all other respects, the  
26 final judgment and decree was affirmed. By its order dated  
27 October 4, 1965, the Court of Appeals denied the United  
States petition for rehearing and clarification.

29 The cause is now before the Court pursuant to the mandate

1 of the Court of Appeals for appropriate modification of the  
2 Final Judgment consistent with that Court's opinion, and pur-  
3 suant to Notice of Hearing for such purpose duly served upon  
4 all parties to the cause except those heretofore determined  
5 to have no interest in the required modification. Upon con-  
6 sideration of the mandate and opinion of the Court of Appeals  
7 and the Final Judgment heretofore entered herein, the Court  
8 hereby makes and enters the following Findings of Fact,  
9 Conclusions of Law, and Modified Final Judgment and Decree:

10 FINDINGS OF FACT

11 I

12 On or about May 5, 1930, the Superior Court of the State  
13 of California in and for the County of San Diego entered  
14 findings of fact, conclusions of law and judgment in Case  
15 No. 42850 in the records of said Court. The parties to said  
16 action were the Rancho Santa Margarita, Vail Company and  
17 various individuals interested in that Company, the Executors  
18 of the Will of Murray Schloss, deceased, and Philip Playtor.  
19 The Rancho Santa Margarita, the Executors of the Will of  
20 Murray Schloss, deceased, and Philip Playtor did not appeal  
21 from said judgment. Vail Company did appeal from certain  
22 portions only of it. Thereafter and on or about July 12,  
23 1938, the Supreme Court of the State of California reversed  
24 certain portions of the judgment. Said Supreme Court remanded  
25 the case with directions that the new trial be limited to  
26 those matters specifically disapproved and affirmed the trial  
27 court's judgment as to all other matters. Said decision of  
28 the Supreme Court is recorded in 11 Cal.2d 501. Thereafter  
29 on or about December 26, 1940, the Superior Court of the

1 State of California in and for the County of San Diego in  
2 said Case No. 42850 entered a final judgment pursuant to the  
3 stipulation of the parties. A copy of the 1940 stipulated  
4 judgment is attached hereto as Exhibit A.

5 Vail Company and the Executors of the Will of Murray  
6 Schloss, deceased, are parties to the action before this  
7 Court and Vail Company's successor in interest, Rancho  
8 California, has now voluntarily appeared herein. The United  
9 States of America, a party to this action, is in privity with  
10 and the successor of the Rancho Santa Margarita, and Max  
11 Henderson, party in this action, is in privity with and the  
12 successor of Philip Playtor.

13 II

14 By Interlocutory Judgment No. 25 herein, dated April 25,  
15 1961, this Court made certain findings of fact on the basis  
16 of which it concluded, inter alia, (1) that the said 1930  
17 findings of fact and judgment and the 1940 stipulated judg-  
18 ment in the said state court action must be considered one  
19 judgment, (2) that the said state court judgment was in-  
20 equitable and should not be enforced as such by a court of  
21 equity, and (3) that the said state court judgment was not a  
22 contract, but if it were it had been rescinded by Vail  
23 Company. Interlocutory Judgment No. 25 then enjoined the  
24 United States and the other parties to said state court ac-  
25 tion from enforcing or attempting to enforce in any manner  
26 any "judgment, provision or term, finding of fact or conclu-  
27 sion of law" set forth in the said state court action in  
28 either the Supreme Court of California or the Superior Court  
29 in and for San Diego County.

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III

In its said opinion of May 26, 1965, the Court of Appeals determined that the 1940 stipulated judgment in the said state court action was not based upon the 1930 findings of fact but "upon agreement between the litigants." The Court of Appeals further stated: "It was upon that agreement that the California court relied and not upon the facts then (or earlier) existing." It was held that the 1940 stipulated judgment constituted a valid agreement between the parties to the stipulation, that the Vail Company had not established that it was entitled to rescind the agreement or that the United States had in any way repudiated it or estopped itself to assert its continuing validity and effectiveness, and that in any relitigation of rights as between the successor in interest of Rancho Santa Margarita and Vail Company, such relitigation "starts from where it last left off, which in this case, as to Vail, would be the 1940 decree."

IV

While holding that the 1940 stipulated state court judgment is valid and enforceable in this litigation as between the parties to that action, the Court of Appeals further noted "that some relief might be proper should Vail be able to show that mistakes of fact have caused it harm of sufficient magnitude to justify reformation." Without prejudging the question, the Court gave two examples of the kinds of circumstances which might, on application and adequate showing, be basis for some relief.

V

It is therefore plain that for this Court to carry out

1 the mandate of the Court of Appeals it is necessary that  
2 Interlocutory Judgment No. 25, and the Conclusions of Law on  
3 which it is based, be withdrawn and that there be included in  
4 the final judgment of this Court a provision that the 1940  
5 stipulated state court judgment is valid and enforceable as  
6 between the parties thereto and their respective successors  
7 in interest, subject to the rights of any of such parties  
8 and their successors in interest to seek some relief from  
9 the provisions thereof on showing that mistakes of fact have  
10 caused the applicant harm of sufficient magnitude to justify  
11 reformation.

12 The question whether the Findings of Fact on which Inter-  
13 locutory Judgment No. 25 is based are of continuing validity  
14 in light of the decision of the Court of Appeals is one about  
15 which there is, or may be, considerable controversy between  
16 the parties. Without prejudging this question as to any of  
17 such findings, the entry of this Modified Final Judgment and  
18 Decree shall be without prejudice to the right of any party  
19 in any future proceeding herein to attack or assert the  
20 validity of any such Findings of Fact.

21 VI

22 There are other provisions of the several Interlocutory  
23 Judgments, as incorporated into the Final Judgment, and the  
24 Findings of Fact and Conclusions of Law on which the same were  
25 based, which are or may be inconsistent with the Court of  
26 Appeals determination respecting the enforceability of the  
27 1940 stipulated state court judgment as between the parties  
28 thereto and their respective successors in interest. However,  
29 in view of the Court's continuing jurisdiction in this matter,

1 the Court perceives no immediate need to modify and correct  
2 every provision in the constituent parts of the final judg-  
3 ment as heretofore entered which is not wholly consistent  
4 with the reinstatement of the 1940 stipulated state court  
5 judgment. With the understanding that an application or  
6 applications to modify such possibly inconsistent provisions  
7 may be considered hereafter, none of the parties has at this  
8 time requested that the Court take action now to do more than  
9 the minimum required for compliance with the mandate of the  
10 Court of Appeals.

#### 11 CONCLUSIONS OF LAW

##### 12 I

13 The 1940 stipulated judgment in the state court action  
14 referred to in Finding I above, a copy of which is Exhibit A  
15 hereto, is a valid and binding obligation of the parties  
16 thereto and is enforceable in this action as between the  
17 parties thereto and their successors in interest as such an  
18 obligation and as a valid judgment of the Court by which the  
19 same was entered. The said stipulated judgment should there-  
20 fore be incorporated into and adopted as part of the Final  
21 Judgment of the Court in this action. Consistent with the  
22 mandate of the Court of Appeals, it is necessary that in so  
23 incorporating the said 1940 stipulated judgment into this  
24 Court's Final Judgment, and in adopting the same as a part  
25 thereof, there be reserved to the parties thereto and their  
26 successors in interest, the right to seek relief from any of  
27 the provisions of said 1940 stipulated judgment with respect  
28 to which it can be and is shown that mistakes of fact have

1 caused harm to the applicant of sufficient magnitude to justi-  
2 fy reformation.

3  
4 II

5 The list of interlocutory judgments contained in para-  
6 graph 1 of this Court's Final Judgment, dated May 8, 1963,  
7 should be modified to conform to the provisions hereof with  
8 respect to Interlocutory Judgment No. 25.

9 III

10 The right of any affected party to apply for modification  
11 of any other provision of the several interlocutory judgments,  
12 as incorporated into the Final Judgment, or of the Findings  
13 of Fact or Conclusions of Law on which the same are based,  
14 upon showing of incompatibility with or inconsistency be-  
15 tween such provision and the Court of Appeals determination  
16 respecting enforceability of the 1940 stipulated state court  
17 judgment and this Court's continuing jurisdiction to consider  
18 any such application, should be expressly reserved.

19 IV

20 In all other respects, the Final Judgment of this Court,  
21 as entered herein on May 8, 1963, should be continued in  
22 force and effect.

23 MODIFIED FINAL JUDGMENT

24 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

25 I

26 IT IS ORDERED, ADJUDGED, AND DECREED that the 1940 stip-  
27 ulated judgment in the state court action, referred to in  
28 Finding I above and attached hereto as Exhibit A, is a valid  
29 and binding obligation of the parties thereto, is enforceable



1 in this action as between the parties thereto and their suc-  
2 cessors in interest as such an obligation and as a valid  
3 judgment of the Court by which the same was entered, and is  
4 adopted as a part of and incorporated into this Modified  
5 Final Judgment, provided, that there is expressly reserved  
6 to the parties thereto and their successors in interest, the  
7 right to apply for relief from any of the provisions of said  
8 stipulated judgment with respect to which it can be and is  
9 shown that mistakes of fact have caused the applicant harm  
10 of sufficient magnitude to justify reformation.

11 I-A

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Inter-  
13 locutory Judgment No. 25, and the Conclusions of Law on which  
14 the same is based, are hereby withdrawn; provided, that the  
15 entry of this Modified Final Judgment and Decree shall be  
16 without prejudice to the right of any party in any future  
17 proceeding herein to attack or assert the validity of any of  
18 the Findings of Fact in said Interlocutory Judgment No. 25.

19 II

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of  
21 the following Interlocutory Judgments or Orders and the Find-  
22 ings of Fact and Conclusions of Law attached thereto, includ-  
23 ing amendments, if any, are also adopted by reference as  
24 part of and incorporated into the Final Findings of Fact,  
25 Conclusions of Law, and Modified Final Judgment and Decree  
26 of this Court:

	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
1	1	April 7, 1961	Jack & Cosette Garner (Wilson Creek Area) - now merged into 33A
2	2 thru 21	April 7, 1961	Fallbrook & Area South (non-riparian) - now included in Amended 39A
3		November 21, 1962	Amendment to 2 (Parcels to be included in 42 - Rainbow)
4	22	April 7, 1961	Regarding Water Rights on Lands Originally Conveyed by Mexican Grants
5	23	April 7, 1961 April 4, 1962	Appropriative Rights - FPUD Amendment to 23
6	24	April 13, 1961	Non-Statutory Appropriative Rights of USA in SMR for Lake O'Neill
7	24A	May 7, 1963	Stipulation Respecting Appropriative Rights to Use of Waters of SMR for Lake O'Neill - USA & FPUD
8	25	April 25, 1961	Subject to provisions of paragraph I-A and any other applicable provisions of this Modified Final Judgment and Decree
9	26	April 25, 1961	Oviatt (Parcels in 33 and 34A)
10	27	April 25, 1961	Knox (All parcels included in 40)
11	28	May 24, 1961	Miscellaneous Surface Impoundments
12		December 8, 1961	Amendments to 29A, 31A, 32A, 33A & 34A (Explanation of parcel numbers)
13		February 8, 1962	Amendments to 29A, 31A, 32A, 33A, 34A & 38A (Jurisdiction of surface waters)
14	29A	August 1, 1961	Sandia Creek sub-watershed (All Parcels now included in 39A)

	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
1			
2			
3	30	March 8, 1962	Murrieta-Temecula Ground Water Area (Riverside County subdivisions)
4			
5		July 3, 1962	Amendment to 30 (Storage Units 1, 2, 3, 4 - approximately 418,000 ac.ft.)
6			
7		March 6, 1963	Amendment to 30 - Respecting Stipulation--Settling Rights
8			
9	30A	March 13, 1963	Murrieta-Temecula - Outside Ground Water Area
10	31	January 25, 1963	Santa Gertrudis (Lower Murrieta)
11			
12	31A	July 27, 1961	Tucalota Creek Sub-watershed Amended (Lower Murrieta)
13		March 6, 1963	Amendment to 31A - Respecting Stipulation - Settling Rights
14			
15	32	December 11, 1962	DeLuz Creek Sub-watershed
16		March 6, 1963	Amendment to 32 - Respecting Stipulation - Settling Rights
17	32A	August 4, 1961	DeLuz Creek Sub-watershed
18	33	December 11, 1962	Anza Valley, Wilson Creek & Coahuilla-Down to ground water area
19			
20	33A	August 4, 1961	Wilson & Coahuilla Creeks Sub-watershed
21		March 6, 1963	Amendment to 33A - Respecting Stipulation - Settling Rights
22		April 9, 1963	Amendment to 33A - Interlocutory Judgment 1 merged into 33A
23			
24	34	February 20, 1963	Temecula Creek above Aguanga Ground Water Area.
25		March 6, 1963	Amendment to 34 - Respecting Stipulation - Settling Rights
26			
27	34A	December 7, 1961	Temecula Creek Sub-watershed Above Vail Dam
28			
29			
30			

	<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
1		March 6, 1963	Amendment to 34A - Respecting Stipulation - Settling Rights
2			
3		June 4, 1962	Vail Company (Temecula Creek Below Vail Dam and to the Gorge)
4	35		
5		December 11, 1962	Vail Company
6	35A		
7		July 3, 1962	Warm Springs & Diamond-Domenigoni (Upper Murrieta)
8	36		
9		February 20, 1963	Warm Springs (Upper Murrieta)
10	36A		
11		March 6, 1963	Amendment to 36A - Respecting Stipulation - Settling Rights
12	37	April 6, 1962	Military Enclave
13		November 8, 1962	Amendment to 37 (Sewage effluent discharges & Water conservation practices)
14		February 20, 1963	Amendment to 37 (Exclusive jurisdiction)
15			
16	38		(No Judgment #38)
17	38A	January 3, 1962	Temecula Creek Sub-watershed - Below Vail Dam and above Gorge
18		March 6, 1963	Amendment to 38A - Respecting Stipulation - Settling Rights (1/30/62 Order setting aside 38A 2/1/62 Order vacated)
19			
20		December 11, 1962	SMR - Below Gorge and above Enclave (Includes Sandia)
21	39		
22		April 9, 1963	Amendment to 39 - (Includes Fallbrook and Area South)
23			
24		November 8, 1962	SMR - Below Gorge and above Enclave (Includes 29A)
25	39A		
26		March 13, 1963	Amendment to 39A (Includes Fallbrook and Area South) (Also 2 thru 21)
27			
28		December 12, 1962	Aguanga Ground Water Area (Temecula & Wilson)
29	40		
30			

<u>Number</u>	<u>Date Interlocutory Judgment or Order Entered</u>	<u>Brief Description of Subject Matter</u>
41	November 8, 1962	Indian Reservations
42	October 10, 1962	Rainbow Creek
42A	February 25, 1963	Rainbow Creek
43	February 6, 1963	Cottle & Gibbon
44	May 8, 1963	National Forest Lands
45	December 12, 1962	Order Regarding Water Extractions
	January 27, 1966	Order Superseding No. 45 and Order of September 3, 1964

Provided, that there is hereby expressly reserved the jurisdiction of this Court to consider, and the right of any affected party to make application for, modification of any of the provisions of said Interlocutory Judgments or Orders, or of the Findings of Fact and Conclusions of Law attached thereto, which is incompatible or inconsistent with the provisions of paragraph I of this Modified Final Judgment or with the Court of Appeals' determination respecting enforceability of the said 1940 stipulated state court judgment as between the parties thereto and their respective successors in interest.

### III

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that questions with respect to interpretation and application of the said 1940 stipulated state court judgment which are not hereby specifically decided will be considered and determined upon application of any affected party after notice to other affected parties.

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IV

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment provisions as set forth in the aforesaid interlocutory judgments and orders and the original Final Judgment herein are effective as of May 8, 1963, the date of entry of said Final Judgment (or any later dates as of which a modification of any thereof may have been entered), and that the modifications of the said Final Judgment hereby made are effective as of the date of entry of this Modified Final Judgment and Decree.

V

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains continuing jurisdiction of this cause as to the use of all surface waters within the watershed of the Santa Margarita River and all underground or sub-surface waters within the watershed of the Santa Margarita River, which are determined in any of the constituent parts of this Modified Final Judgment to be a part of the sub-surface flow of any specific river or creek, or which are determined in any of the constituent parts of this Modified Final Judgment to add to, contribute to, or support the Santa Margarita River stream system.

VI

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF CALIFORNIA STATE WATER RIGHTS BOARD, or its successor agencies as may be provided by the laws of the State of California, shall continue to exercise its statutory jurisdiction over all present or future

1 appropriate rights to the use of waters of the Santa  
2 Margarita River and its tributaries.

3 VII

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
5 this Court shall also continue to exercise jurisdiction  
6 concerning all present or future appropriative rights  
7 insofar as such uses may conflict with or be adverse to  
8 the exercise of any prior vested water right within the  
9 Santa Margarita River watershed, as adjudicated by the  
10 provisions of the Interlocutory Judgments or orders  
11 above set forth and by this Modified Final Judgment.

12 VIII

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that  
14 this Court reserves the right to amend, nunc pro tunc,  
15 upon its own motion either with or without notice, any  
16 interlocutory judgment or order or exhibit attached  
17 thereto or this Modified Final Judgment, for the purpose  
18 of correcting errors or inaccuracies in names, legal  
19 descriptions or other similar factual data contained in  
20 said interlocutory judgments or orders or exhibits, as  
21 provided in Rule 60A of the Federal Rules of Civil  
22 Procedure.

23 IX

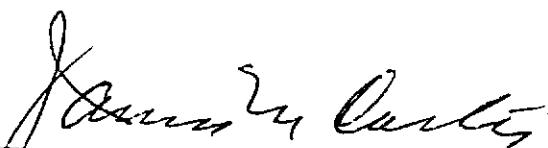
24 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the  
25 continuing jurisdiction reserved by this Court will be  
26 exercised on the Court's own Motion, or upon the motion  
27 of any party to this cause, his heirs, successors, or  
28 assigns, made upon notice and in accordance with the  
29 Rules of this Court.

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X

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither this Modified Final Judgment and Decree nor any Interlocutory Judgment or order incorporated herein shall in any manner affect the right of the United States of America to acquire by the exercise of the power of eminent domain property including water rights of any nature as is or may be authorized by the laws of the United States of America; nor shall this Modified Final Judgment and Decree or any Interlocutory Judgment or order incorporated herein prevent any defendant from acquiring property including water rights of any nature by the exercise of the power of eminent domain as is or may be authorized by the laws of the State of California.

DATED: 4/6/66, 1966.

  
\_\_\_\_\_  
JAMES M. CARTER, Judge  
United States District Court