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Skagit County Auditor
6/5/2017 Page

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DOCUMENT TITLE:

SUPPLEMENTAL JUDGMENT

REFERENCE NUMBER:

Not Applicable

Additional numbers on page _____

PLAINTIFF/GRANTORS:

**EAST NORTHBEACH COMMUNITY WATER ASSOCIATION,
A WASHINGTON NON-PROFIT CORPORATION**

Additional grantors can be found on page _____

DEFENDANTS/GRANTEES:

**DAVID F. ASHBACH AND GAYLE M. ASHBACH, HUSBAND AND WIFE
AND THE MARITAL COMMUNITY THEREOF**

Additional grantees can be found on page _____

ABBREVIATED LEGAL DESCRIPTION:

(Lot, block, plat name OR; qtr/qtr, section, township & range OR; unit, building and condo. name)

Lot 2 of Short Plat 93-047 recorded under AFN 9410070117

Additional legal description can be found on page _____

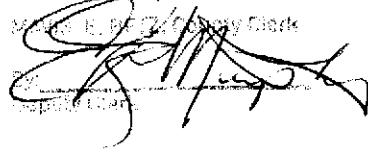
ASSESSOR'S 12-DIGIT PARCEL NUMBERS:

P105982

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5/18/2017

W. E. P. J. Clerk


IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT

EAST NORTHBEACH COMMUNITY
WATER ASSOCIATION, a nonprofit
corporation,

Plaintiff,

vs.

DAVID F. ASHBACH and GAYLE M.
ASHBACH, husband and wife,

Defendants.

NO. 14-2-01501-4

SUPPLEMENTAL JUDGMENT

Judge George N. Bowden
(Presiding Visiting Judge)

The Motion for Entry of this SUPPLEMENTAL JUDGMENT was brought before this Court on February 15, 2017 by Philip A. Serka of the Law Firm of Adelstein, Sharpe & Serka LLP, attorney on behalf of the Plaintiff East Northbeach Community Water Association (hereinafter referred to as the "Association"), and the Defendant David F. Ashbach represented by T.R.G. 'Ron' Wolff and not appearing, and Defendant Gayle M. Ashbach represented by Brian C. Ashbach of the Ashbach Law Offices and appearing for Defendant Gayle M. Ashbach; and,

1
2 THIS SUPPLEMENTAL JUDGMENT is intended to add additional terms
3 of the judgment entered by this Court on January 9, 2017 by and between the
4 parties, and therefore:

5 A. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
6 East Northbeach Community Water Association is entitled to the following
7 declaratory relief:
8

9 1. The Association may replace the well within the Water
10 System Easement boundaries which is considered maintenance, subject
11 to any permits and/or regulatory approval.

12 2. The Association has the right to maintain the 10-foot access
13 easement.

14 3. The Association is entitled to construct within the existing
15 well house the proposed duplex booster pump system, dedicated backup
16 generator (including propane tank) with automatic transfer switch to
17 operate the booster pumps and well pumps.
18

19 4. The dimensions of the Water System Easement retained by
20 the Association are as dedicated via Short Plat 93-047 which was
21 recorded under Auditor's File Number 9410070117 and includes a 10-foot
22 wide easement for ingress, egress and utilities as depicted on the Short
23 Plat 93-047.
24

25 5. The Association has the right of access at any reasonable
26 time to undertake necessary maintenance authorized to the Water
27 System.
28

1
2 6. The Association is permitted to survey, to the extent
3 necessary, the applicable boundaries of the Defendants' property in order
4 to establish the boundaries of the Water System Easement, and the 100-
5 foot-radius well protection zone ("Well Protection Zone") in order to verify
6 the location of the Defendants' existing sewer line. In the event that the
7 Defendants' sewer line is located within the Well Protection Zone,
8 Defendants shall be required to relocate the sewer line outside of the Well
9 Protection Zone at Defendants' expense. Said work shall be
10 accomplished as soon as reasonably possible. The Association shall be
11 required to provide Defendants written reports, if produced, from its
12 investigation as to the location of the sewer line.
13

14 **B. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
15 **DECREED** that the Defendants David F. Ashbach and Gayle M. Ashbach's
16 counterclaims against the Association for slander of title, connection fees and
17 damages are dismissed.
18

19 **C. IT IS HEREBY FURTHER ORDERED, ADJUDGED AND**
20 **DECREED**, and upon stipulation of Plaintiff and Defendants, Defendants David
21 F. Ashbach and Gayle M. Ashbach and their agents are enjoined from interfering
22 with the Association's right to exercise its Water System Easement rights as set
23 forth herein, provided such rights are performed in a manner which is consistent
24 with the terms and conditions of this judgment.
25

26 **D. The Court's oral rulings (appended hereto) are incorporated by**
27 **reference herein to further define its ruling.**
28

1
2
3 DATED this 12th day of April, 2017.

4
5 George N. Bowden
6 The Honorable Judge George N. Bowden
(presiding visiting judge)

7 Presented by:

8 ADELSTEIN, SHARPE & SERKA LLP

9
10 By: [Signature]
11 Philip A. Serka, WSBA #6814
12 of Attorneys for Plaintiff East Northbeach
Community Water Association

13 Approved for Entry, Copy Received:

14 T.R.G. WOLFF, ATTORNEY AT LAW

15
16 By: [Signature]
17 T.R.G. Wolff, WSBA#4146
Attorney for Defendant David F. Ashbach

18 ASHBACH LAW OFFICES, LLC

19 By: [Signature]
20 Brian C. Ashbach, WSBA#39995
21 Attorney for Defendant Gayle M. Ashbach

22
23
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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF SKAGIT
3

4 EAST NORTHBEACH COMMUNITY
5 WATER ASSOCIATION,

6 Plaintiff,

7 vs.

8 DAVID ASHBACH, et ux.,

9 Defendants.

NO. 14-2-01501-4

10 PRESENTATION
11

12 BE IT REMEMBERED, that on February 15, 2017, the
13 above-named and numbered cause came on regularly for
14 hearing before the HONORABLE GEORGE N. BOWDEN sitting as
15 judge at the Snohomish County Courthouse, in the city of
16 Everett, County of Snohomish, State of Washington;

17 The plaintiff appeared through its attorney, Philip A.
18 Serka;

19 The defendants appeared in person and through his
20 attorney, Brian Ashbach.

21 WHEREUPON, the following proceedings were had to-wit:
22
23
24
25

13:06:48 1 THE COURT: We're here on Mr. Serka's motion for
13:06:50 2 entry of a supplemental judgment, and, in the pleadings
13:06:53 3 I've reviewed, there were some objections made with respect
13:06:56 4 to timeliness as a motion or multiple motions for
13:07:00 5 reconsideration.

13:07:02 6 Since I had indicated that I would entertain entry of a
13:07:05 7 supplemental judgment, I'm not concerned with the fact that
13:07:10 8 some of this may not have been within a ten-day time limit
13:07:13 9 for reconsideration, so I'll get to the merits of the
13:07:19 10 issues without concern for our rules that apply to
13:07:22 11 reconsideration, which motions are usually heard without
13:07:26 12 argument. So I'll hear argument.

13:07:28 13 Mr. Serka, it's your motion.

13:07:30 14 MR. SERKA: Thank you, Your Honor.

13:07:31 15 As you know, you entered findings on reconsideration.
13:07:38 16 Typically, when we're entering findings or judgments, I'm
13:07:43 17 used to having some discussion about or interlineations on
13:07:47 18 the proposed findings. You accepted the findings and
13:07:50 19 judgment as written. You gave me an -- and I appreciate
13:07:52 20 that gave me an opportunity to provide some comment on
13:07:56 21 them, followup. Specifically the concerns I have with the
13:08:01 22 conclusions, and I'll say number one and two are the
13:08:06 23 conclusions, and they're in the supplemental judgment. But
13:08:08 24 the conclusions of law basically say -- one is they're not
13:08:11 25 conclusions of law, they're findings of fact. But --

13:08:15

1

THE COURT: A distinction which the Court of

13:08:19

2

Appeals will sort out as they often do.

13:08:23

3

MR. SERKA: My main concern is -- my only concern

13:08:26

4

is we recognize the judgment of this Court. We wanted to

13:08:29

5

make sure that the decision is consistent with that

13:08:32

6

judgment.

13:08:32

7

Number one of the conclusions of law said that there's

13:08:35

8

no right to increasing the drawdown through this well or

13:08:40

9

increasing the storage capacity of the current water

13:08:43

10

system.

13:08:44

11

Number two says any added extraction of water from the

13:08:49

12

well will constitute an added impact upon aquifer on Guemes

13:08:56

13

Island. Now, those conclusions are significant, but that

13:08:59

14

is not what the Court stated and goes way beyond what this

13:09:02

15

decision should be.

13:09:03

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If you look at the transcript Number 4 lines 5 through

13:09:09

17

6 say, The plaintiff, rather, to my view, has not met its

13:09:15

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burden of showing that there will be no adverse impact on

13:09:18

19

the defendant's water supply. On line 21 and 22 says, But

13:09:23

20

there have been no measurements taken, no hydrology studies

13:09:27

21

reports presented.

13:09:27

22

So that's what the Court decided. There was no

13:09:31

23

finding, there was no evidence to show that the association

13:09:34

24

is actually impacting the aquifer. There's no evidence to

13:09:40

25

show that the increased drawdown -- there's no right to

1 increase the drawdown in the well. As you can understand,
2 Your Honor, this would pose some real issues on terms of if
3 we want to put storage elsewhere. And this Court has said
4 in its rulings that the parties all recognize that the --
5 that they have -- that tanks that may go in other property
6 not belonging to defendants is not an issue here.

7 So we propose that those two conclusions of law be
8 deleted because, as I just read to you in your findings,
9 that's not what this Court decided. I understand the Court
10 said that we lose because we have not met its burden of
11 proof, and I'm willing to accept that. And the proposed
12 paragraph, paragraph 3, deals with burden of proof which is
13 a conclusion of law. And I've expanded it to state that we
14 did not show -- prove these things as your findings state.
15 But to leave in paragraph conclusions of one and two simply
16 are not based on the Court's decision. And I'm just here
17 asking the Court to comport or -- make sure the decision is
18 in compliance with your findings.

19 I understand I'm not here to ask -- to argue to the
20 Court you shouldn't have made that decision or made that
21 finding. I know that's what the response does on a lot of
22 other favorable findings, that's not before Court. It's
23 very limited and pointed on that issue.

24 So, as you can see, if we leave conclusions of law one
25 and two in which are not part of the decision at all, there

13:11:21 1 was no evidence, and the Court did not rule on that basis.
13:11:25 2 And you have said this is not intended to prevent us from
13:11:31 3 proposing storage elsewhere. Those findings may affect
13:11:34 4 that proposal.

13:11:36 5 Now not saying we have a right, just saying we have a
13:11:41 6 right to prove on another alternate site that this would be
13:11:47 7 acceptable. But these conclusions -- these conclusions
13:11:49 8 really simply say we can't do it and that we have impacted
13:11:53 9 this system.

13:11:54 10 So we respectfully request that you accept on my
13:12:02 11 recommendations on those -- on paragraphs one and two and
13:12:05 12 expand paragraph three as in the supplemental judgment to
13:12:08 13 say, well, we have not fulfilled the burden of proof which
13:12:11 14 is a legal -- legal conclusion this Court can make.

13:12:16 15 Secondly, I just didn't know, and you can clarify this
13:12:18 16 to me, Your Honor, you made delineations, you know, written
13:12:22 17 on the judgment and says you appended the decision and that
13:12:26 18 would be part of the -- was that intended to be part of the
13:12:28 19 judgment, Your Honor?

13:12:29 20 THE COURT: Yes.

13:12:30 21 MR. SERKA: O.K. All right.

13:12:32 22 Well, then I don't quite have the issue, concern so
13:12:34 23 much on the other points that I raised. Because I think
13:12:41 24 your -- your other findings deal with most of the issues on
13:12:46 25 that. And I did notice that, for instance, the parties

13:12:51 1 stipulated that we have access to the easement. I was
13:12:54 2 concerned it wasn't part of the judgment, but I think here
13:12:58 3 the stipulation has been signed by you so is intended to be
13:13:02 4 part of the judgment; is that correct; Your Honor?

13:13:03 5 THE COURT: Yes.

13:13:04 6 MR. SERKA: O.K.

13:13:05 7 Then the only other issue to it on the -- and we can --
13:13:09 8 I can cross out the supplemental judgment parts that you've
13:13:13 9 just -- I think we recognize are not an issue, was the
13:13:17 10 stipulation on access. You might recall that we had an
13:13:20 11 injunction pending to deal with that issue because of what
13:13:25 12 we purport were effects or actions by the defendant to
13:13:33 13 prevent us from accessing. I understand now we have the
13:13:36 14 right of access, and it's a stipulation. But and I ask the
13:13:39 15 Court after that we came in, well, we have a judgment
13:13:43 16 pending, I mean, injunction claim for that. And you said,
13:13:48 17 we'll deal with that later.

13:13:49 18 So this is my attempt to deal with it later, and that
13:13:52 19 we would like to have some teeth to assure that there's
13:13:59 20 no interference or affect on the rights of access by the
13:14:05 21 defendants. And typically situation where there has been
13:14:08 22 no history, that would not be an issue. Well, there has
13:14:12 23 been history, and we did submit information about the
13:14:15 24 defendants' actions. And so this is my followup on what
13:14:19 25 the Court said that we'll deal with that issue on the

13:14:22 1 stipulation. And I've proposed that there be an injunction
13:14:28 2 to protect those rights in here.

13:14:31 3 Lastly, this Court said that -- that tanks that may go
13:14:43 4 on other property not belonging to defendants is not an
13:14:45 5 issue here, and I understand that's not an issue. And that
13:14:48 6 was the effect of paragraph E on here is to simply say
13:14:53 7 that. This is a case that deals with servient burden and a
13:14:58 8 servient estate. Otherwise we wouldn't be here before the
13:15:00 9 Court. That was the issue here. And some of the
13:15:05 10 particularly the conclusions one and two and some of the
13:15:08 11 other findings kind of talk about broadly, you know, Guemes
13:15:15 12 Island and total aquifer on Guemes Island, and I wanted to
13:15:20 13 have that restriction which is consistent with what you
13:15:22 14 said in your court rule.

13:15:23 15 THE COURT: O.K. Mr. Ashbach.

13:15:25 16 MR. B. ASHBACH: Thanks, Your Honor.

13:15:26 17 THE COURT: Or Mr. Ashbach.

13:15:28 18 MR. B. ASHBACH: I'll take it. Thank you.

13:15:31 19 We kind of got two issues here, as I see it. First
13:15:34 20 when we were here in front of the Court in January, Your
13:15:36 21 Honor had given plaintiff leave to add supplemental
13:15:42 22 findings, conclusions. Those were filed February 2nd, and
13:15:49 23 then for the first time we got request basically for a
13:15:55 24 reconsideration again of the conclusions of law one and two
13:16:02 25 and adding to number three that -- we first became aware of

1 those on Monday. So that's today. That's 30-something
2 days after the judgment was signed and findings and
3 conclusions were entered by Your Honor.

4 That's quite a bit different than what Your Honor
5 granted leave for the plaintiff to do. Those modifications
6 certainly are untimely. I guess if Your Honor is not
7 necessarily concerned with the timeliness aspect of it. It
8 is our position that the Findings of Fact, Conclusions of
9 Law that were entered back in January are adequate and are
10 complete when the Court's rulings are attached. We can
11 kind of go line by line or topic by topic, if you want,
12 through the plaintiff's request, but basically what the
13 Court at the end of the trial had determined what they were
14 trying to do was an unreasonable burden on the property and
15 that attempts today for basically a new motion for
16 reconsideration, at least that's the effective impact of
17 it, is to do piecemeal parts here and here and here and try
18 and fashion some sort of benefit to them when the ruling is
19 not -- this is an unreasonable burden.

20 So really that we're here is fairly frustrating but
21 certainly the proposals the plaintiff had made are
22 inappropriate for all the reasons cited in our brief. I
23 don't know how long Your Honor wants me to speak, but it
24 seems to be fairly clear that the additions or the changes
25 should be denied.

13:17:42

1

THE COURT: All right.

13:17:43

2

Anything further, Mr. Serka?

13:17:44

3

MR. SERKA: Other than, Your Honor, no, we didn't

13:17:47

4

have the chance to actually talk about the actual language

13:17:51

5

of the findings. And this is not a reconsideration.

13:17:57

6

Basically it's a -- basically to make sure that the

13:18:00

7

comport -- make sure that the decision is consistent with

13:18:04

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your rulings, and so we've -- all counsel -- we've all

13:18:08

9

intended it to be.

13:18:10

10

THE COURT: O.K.

13:18:12

11

Well, the -- I do think that there is, in part, a

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little bit of an effort to restrict the decision that I had

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entered in some respects, for example, where you have

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14

wanted delineation of the right of access, and the Ashbachs

13:18:39

15

have said that -- that they've acknowledged that, they've

13:18:43

16

stipulated to that. And as long as it's at reasonable

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17

times, but the proposed language of your supplemental

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18

judgment is to undertake necessary maintenance or upgrades.

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19

This trial was largely about the question of whether

13:19:00

20

the water district could upgrade the water system, so

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21

adding that language seems to be intended to undercut the

13:19:08

22

Court's prior decision, and I don't wish to change the

13:19:12

23

decision that I entered.

13:19:14

24

I would agree with you that what's denominated as

13:19:19

25

conclusions of law one and two are, in reality, factual

1 findings insofar as there's nothing in the existing
2 easement that provided any right or entitlement to the
3 water district to increase the size of the well house; add
4 storage tanks; increase the size of the storage tanks; or,
5 most importantly, draw down more water from this well
6 facility than was being drawn down at the time of the
7 creation of the easement.

8 While I know it's your view that this is not a water
9 rights case, I don't think that the impact on the aquifer
10 and the potential impact on the Ashbachs' right to a
11 continuation of their supply of fresh water, that is drawn
12 from the same aquifer through a well on their property, are
13 somehow not at issue in this case. And that's where my
14 comment at the end of trial about the lack of any hydrology
15 studies came in place.

16 The ability of the water district to pump more, store
17 more, expand their facilities, and so forth is inextricably
18 intertwined with what the impact of that may be on the
19 aquifer and the impact that that may have for the Ashbachs.

20 If this is an aquifer that's regenerating at a rate
21 that permits a greater drawdown without any adverse impact,
22 then that's one thing. If this is an aquifer that has
23 ongoing problems with saltwater intrusion, limited fresh
24 water, and a limited capacity of the aquifer to serve the
25 needs of the people on Guemes Island, then you do have a

13:21:20 1 question of water rights that's presented here. And
13:21:24 2 where -- one of the places where we disagreed was over your
13:21:30 3 claim that because the well that's now servicing the water
13:21:35 4 district was prior to the Ashbachs' well, that somehow they
13:21:41 5 have a paramount right to increase the amount of water
13:21:45 6 taken from that well regardless of the impact on the
13:21:50 7 Ashbachs, and I disagree. I think as another user of water
13:21:54 8 with a well that's been approved, the hierarchy still
13:22:03 9 obligates the water system to protect the water supply for
13:22:06 10 the other users who have wells in the area that have been
13:22:10 11 approved.

13:22:11 12 It might be a different question if circumstances
13:22:16 13 changed and there was less water available. Maybe then the
13:22:19 14 paramount obligation would go to those who are prior in
13:22:24 15 time. But that helps maybe to explain some of my comments
13:22:30 16 at the conclusion of trial.

13:22:31 17 Be that as it may, while the trial did not have
13:22:37 18 anything to do with whatever rights the association may
13:22:43 19 have to drill a well elsewhere or to provide storage tanks
13:22:47 20 elsewhere, I assume those are issues that, if they surface,
13:22:54 21 then the Ashbachs' interest can be voiced at that time
13:23:00 22 consistent with whatever plans are afoot permitting,
13:23:04 23 regulatory approval, and the like.

13:23:06 24 So I don't want my decision to impair the ability of
13:23:11 25 the water service to go forward in trying to find a

1 location for tanks to go forward with expanding its system
2 through an easement or access elsewhere. There are two
3 undeveloped lots there now because of a lack of water. If
4 one of those owners chose to sell to the water district as
5 a site for a community well to serve the water district,
6 that might be an option. And then that would bring into
7 play the permits, the regulatory approval. And the folks
8 who feel their interest may be adversely affected would
9 have a right to be heard.

10 And those are different interests than the rights
11 asserted by the owners of the servient estate who has an
12 obligation to cooperate with the water district so that the
13 nonexclusive easement remains in effect and so forth.

14 So I don't know if that's helpful. Looking at the
15 proposed supplemental judgment that you've offered, while I
16 don't know that a lot of this language is necessary, I
17 would approve a supplemental judgment that states as
18 follows:

19 Number one, the association may replace the well within
20 the water system easement boundaries which is considered
21 maintenance subject to any permits and/or regulatory
22 approval.

23 Two, the association has the right to maintain the
24 10-foot access easement. I'm not saying that you have a
25 right or the water district has a right to pave the access

13:24:58 1 road which is now essentially lawn enjoyed by the Ashbachs
13:25:06 2 which also serves as access to the pump house.

13:25:11 3 I think the district has a right to access the pump
13:25:18 4 house. If they damage the lawn or sod, they would have an
13:25:21 5 obligation to restore whatever damage results. And I'm
13:25:26 6 sure they could take precautions by putting down plywood or
13:25:31 7 something if vehicles are going to traverse grass that's,
13:25:37 8 you know, likely to be disturbed there. Number of things
13:25:40 9 that can be done.

13:25:41 10 But I'm not going to enter finding that implicitly
13:25:45 11 gives permission to the district to go in and pave an
13:25:49 12 access road on the Ashbachs' property. So I'm not going to
13:25:57 13 approve language that says they may improve the access, but
13:26:00 14 they may maintain it.

13:26:02 15 Three, I have no objection to that language about
13:26:08 16 construction or being entitled to construct within the
13:26:12 17 existing well house a proposed duplex booster pump. And
13:26:16 18 you had "booster booster pump," so I assume that was just a
13:26:23 19 scrivener's error. And the generator and the transfer
13:26:26 20 switch. These seem to be in the nature of maintenance to
13:26:29 21 make sure that the water system will function in the case
13:26:31 22 of a power outage and things like that.

13:26:36 23 Number four I had no problem with.

13:26:38 24 Number five, I would approve language that says the
13:26:41 25 association has the right of access at any reasonable time

13:26:45 1 to undertake necessary maintenance authorized to the water
13:26:49 2 system. And I had no objection to paragraph 6 which
13:26:53 3 allowed for the surveying and removal of any encroaching
13:26:59 4 septic system within the easement boundary.

13:27:02 5 So I would strike paragraph D at the very end, given my
13:27:20 6 comments here. And if you wish to transcribe these
13:27:23 7 comments and append them to your supplemental judgment, I'd
13:27:28 8 be happy to authorize you to do so.

13:27:33 9 MR. B. ASHBACH: Your Honor, can I address
13:27:34 10 something? Is there any way to have just a notice
13:27:38 11 requirement added in to number five just reasonable time?

13:27:42 12 THE COURT: I'm not going to add that because I
13:27:44 13 don't think it's necessary. And one of the problems is
13:27:50 14 that if there's a power outage or other emergency, you
13:27:54 15 know, there may not be time enough to give --

13:27:57 16 MR. B. ASHBACH: Yeah. I understand that.

13:27:58 17 THE COURT: -- advance notice. So I think it's --
13:28:00 18 that's subsumed within the phrase or the word "reasonable."

13:28:04 19 MR. B. ASHBACH: O.K.

13:28:07 20 THE COURT: So I've made those various
13:28:09 21 interlineations. If you want, I can hand down the proposed
13:28:13 22 supplemental judgment so you could work on a clean copy.
13:28:16 23 Or if you'd prefer to go back and retype or add the -- my
13:28:21 24 comments from today, I'll leave that up to you.

13:28:25 25 The only caveat is I'm here today and tomorrow, then

13:28:28 1 I'll be out of the country for two weeks. And thereafter
13:28:30 2 you'll need to find me in juvenile court.

13:28:33 3 MR. SERKA: O.K.

13:28:34 4 Your Honor, I did have just a couple questions for you,
13:28:37 5 if I may.

13:28:37 6 THE COURT: O.K.

13:28:38 7 MR. SERKA: Paragraph E. That was the one -- you
13:28:45 8 say it in your decision. It's restricted to -- I think you
13:29:01 9 said in your narrative.

13:29:07 10 THE COURT: I was looking, I think, at the earlier
13:29:17 11 supplemental judgment you drafted.

13:29:35 12 MR. B. ASHBACH: Your Honor's talking about the
13:29:37 13 judgment and order that was filed on February 2nd.

13:29:40 14 THE COURT: Well, I think the reference now is to
13:29:42 15 the second supplemental judgment which had maybe rearranged
13:29:48 16 things. So I had looked at the -- so looking at paragraph
13:29:56 17 E, with the comments that I've made today, I don't see a
13:30:02 18 need to include paragraph E, presuming that you'll wish to
13:30:07 19 append my -- a transcript of my decision to your
13:30:11 20 supplemental judgment.

13:30:13 21 MR. B. ASHBACH: O.K.

13:30:14 22 THE COURT: So let me --

13:30:17 23 MR. B. ASHBACH: I guess to the extent that Your
13:30:21 24 Honor's made some additions today, the prior judgment that
13:30:24 25 remains unaffected?

13:30:26

1

THE COURT: Correct.

13:30:27

2

MR. B. ASHBACH: Thank you.

13:30:28

3

THE COURT: So I'll hand this down, and you can

13:30:30

4

take a look at that.

13:30:32

5

And, as I say, if you prefer to enter that another day

13:30:37

6

after getting a transcript of my oral ruling today, that's

13:30:40

7

fine with me.

13:30:40

8

MR. SERKA: I can do that and send it to counsel.

13:30:43

9

And just send it to you and --

13:30:45

10

THE COURT: If it's signed, I'll go ahead and sign

13:30:48

11

off on it, although that probably won't happen until I get

13:30:51

12

back in March. And if there are problems, I can sort them

13:30:54

13

out later.

13:30:55

14

MR. B. ASHBACH: I actually think this is fine.

13:30:58

15

Let me just confer.

13:31:05

16

MR. SERKA: On the conclusions, Your Honor, you're

13:31:08

17

leaving them as they are, then?

13:31:09

18

THE COURT: Yes. Although I am mindful at least a

13:31:13

19

couple of the conclusions are more properly defined as

13:31:17

20

findings.

13:31:20

21

MR. SERKA: O.K.

13:31:38

22

MR. B. ASHBACH: Should I interlineate in here

13:31:40

23

that otherwise the judgment remains unaffected?

13:31:42

24

THE COURT: I don't think you need to because I

13:31:44

25

haven't otherwise changed the judgment, so it remains in

13:31:47

1

effect. So that would be surplusage.

13:31:51

2

MR. B. ASHBACH: O.K.

13:31:52

3

THE COURT: If you sign that around and want to

13:31:53

4

enter that or some similar document today, just let my

13:31:57

5

clerk know. She can make copies. And I'll sign that in

13:32:00

6

chambers.

13:32:02

7

MR. SERKA: I'll redo it and work it out between

13:32:06

8

us.

13:32:06

9

THE COURT: That's up to you.

13:32:12

10

MR. B. ASHBACH: Your Honor, can we address one

13:32:13

11

other thing?

13:32:19

12

Paragraph C, Your Honor says that they're enjoined with

13:32:22

13

interfering with the right to exercise water easement

13:32:26

14

system rights.

13:32:29

15

THE COURT: That's fine.

13:32:30

16

MR. B. ASHBACH: Was that intended to be in there?

13:32:31

17

THE COURT: Yes. I believe so.

13:32:41

18

If this is what we're going to sign.

13:32:43

19

MR. SERKA: I'll go ahead and revise it and

13:32:47

20

append, you know, the --

13:32:48

21

THE COURT: O.K.

13:32:48

22

So you just want a copy of this so you can do that.

13:32:51

23

That's fine. We'll make a copy of that for you

24

(Whereupon, the proceedings were
concluded.)

25

C E R T I F I C A T E

I, STACEY M. ENRIQUEZ LOMBARDO, do hereby certify:

That the foregoing verbatim report of proceedings were taken by me and completed on February 15, 2017, and thereafter transcribed by me or under my direction by means of computer-aided transcription;

That the foregoing transcript is a full, true, and complete transcript of the proceedings ordered, except as edited by the trial judge reviewing his/her ruling;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That I am herewith delivering the transcript via e-mail to Philip A. Serka.

IN WITNESS HEREOF, I have hereunto set my hand this 21st day of February, 2017.

Stacey M. Enríquez Lombardo

