



**FILED**

05-12-10  
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Lucas D. Hernandez, Mayela Barroso, Maria  
Martinez, Trinidad Martinez, Janette Sandoval,  
Erika Toledo, Marvi Bonilla, Maria Garcia,  
Guadalupe Ramirez, Martha Amezquita, Socorro  
Hernandez, Daniel Gonzalez, Hugo Hernandez,  
Patricia Hernandez, Maria Razo, Aurora Cabral,  
Gabriel Cabrera, Severo Rosa, Mauricio Frias,  
Celia Ruiz, Rosa Maria Montellano, Martha  
Alvarado, Maria Palma, Ruben Zepeda,  
Adriana Ceja, Jose Meza, Samuel Espinoza,  
Eva Montellanos, Federico Garcia, Luis Morales,

Complainants,

vs.

Sunbird Mobile Home Park, Hawkeye  
Asset Management, James Martin and  
Betty Martin,

Defendants.

**Case No. C. 09-11-019**  
(Filed November 25, 2009)

**MOTION TO DISMISS CLAIMS OF LUCAS HERNANDEZ**

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Attorneys for Defendants,  
Sunbird Mobile Home Park; Hawkeye Asset  
Management; James Martin; and Betty  
Martin

**MOTION TO DISMISS CLAIMS OF LUCAS HERNANDEZ**

Defendants Sunbird Mobilehome Park, James Martin and Betty Martin, Co-Trustees of the Martin Family Trust dated July 12, 1972, erroneously sued as individuals, and Hawkeye Asset Management, hereby move for the dismissal of the claims of Lucas Hernandez, on the grounds that the Commission has no jurisdiction over his claims<sup>1</sup> for the following reasons: (1) as a *former* tenant, both now and at the time he filed his complaint, Mr. Hernandez has no cognizable interest in the two issues properly before the Commission, i.e., the reasonableness of water rates and the presence of arsenic in the water supply, and (2) the Commission has no jurisdiction to resolve billing disputes, and thus cannot afford the monetary relief Mr. Hernandez requests.

**APPLICABLE LAW**

California Public Utilities Code section 2705.6 provides, in pertinent part:

(a) A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a *tenant* complains about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.

\* \* \*

(c) The commission may afford *rate relief* or may order the mobilehome park *to improve its water supply, facilities, and services* on those terms it finds just and reasonable, or both. (Emphasis added.)

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<sup>1</sup> The Complaint sets forth four requests for relief: (1) a determination that the rates are unreasonable; (2) a determination fixing reasonable rates; (3) restitution of \$2,909.35; and (4) an order to provide arsenic-free water. (Complaint of Lucas Hernandez)

**THE COMMISSION'S JURISDICTION IS LIMITED TO COMPLAINTS BY TENANTS ABOUT THE REASONABLENESS OF RATES AND THE ADEQUACY OF SERVICE.**

As has been stipulated by the parties, Sunbird Mobilehome Park is “[a] mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service.” (Exhibit A, letter of February 11, 2010, from Megan Beaman Carlson to Honorable Gary Weatherford) As such, Sunbird is subject to the Commission’s jurisdiction only to the extent set forth in PUC section 2705.6. That is, upon complaint of a *tenant*, the Commission may only decide two things: the reasonableness of the rates Sunbird charges for water service, and the adequacy of service.

Here, as admitted in his Complaint, Mr. Hernandez has not lived at Sunbird Mobilehome Park since sometime in December 2008, almost a year before the instant complaint was filed. As such, the Commission has no jurisdiction over the claims of Mr. Hernandez, who was not a Sunbird tenant at any time during the pendency of the instant complaint.

**THE COMMISSION HAS NO JURISDICTION OVER BILLING DISPUTES.**

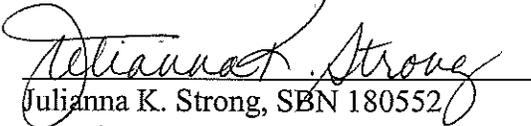
In his prayer for relief, Complainant Hernandez seeks to recover \$2,909.35 from Defendants. Pursuant to PUC section 2705.6 (c), the Commission cannot afford such relief. The Commission is limited to determining the reasonableness of water rates charged and the adequacy of service. Its jurisdiction does not extend to billing disputes between mobilehome park tenants and landlords. Duque v. Haynes (2008) D. 08-01-002 in C.06-08-033, unpublished decision, p. 8 (“We decline to adjudicate any of the claims that certain individual water bills were not calculated properly, despite our awareness of evidence that some of these claims may be meritorious, *because we lack the jurisdiction to do so* under Section 2705.6. The statutory language is explicit and narrowly drawn.”),

citing Silva v. General Telephone Company of California (1986), D.86-11-073 in C.86-06-008, unpublished decision, p. 8. (Attached as Exhibit B is a copy of the Duque decision.)

### CONCLUSION

Defendants respectfully request that the claims of Lucas Hernandez be dismissed, as the Commission lacks jurisdiction over them.

Dated: May 11, 2010

  
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February 11, 2010

VIA ELECTRONIC MAIL

Honorable Gary Weatherford  
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RE: C.09-11-019 (Hernandez vs. Sunbird Mobile Home Park et al.)  
Outcome of Meet and Confer February 9, 2010

Dear Judge Weatherford:

On February 9, 2010, Defendants' attorney Juliana Strong and I met and conferred pursuant to your February 5, 2010 request. Ms. Strong confirmed that Defendants provide water service only to Sunbird Mobilehome Park residents from water supplies and facilities that Defendants own, and that Defendants are not otherwise dedicated to public service.

As such, the parties stipulate that this proceeding is brought under Section 2705.6(a) of the California Public Utilities Code.

Thank you,  
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

/s/ Megan Beaman Carlson

Megan Beaman Carlson  
Attorney for Complainant Lucas D. Hernandez

cc: Juliana Strong

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

January 7, 2008

TO PARTIES OF RECORD IN CASE 06-08-033 ET AL, DECISION 08-01-002,  
MAILED 1/7/2008.

On November 29, 2007, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 15.5(a) of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ ANGELA K. MINKIN  
Angela K. Minkin, Chief  
Administrative Law Judge

ANG:rbg

Attachment

Decision 08-01-002

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Juan Duque and Maria Duque,

Complainants,

vs.

Charles E. Haynes and Alpine Springs Mobile  
Park,

Defendants.

Case 06-08-033  
(Filed August 23, 2006)

And Related Matters.

Case 06-08-034  
Case 06-08-035  
Case 06-08-036  
Case 06-08-037

Juan Duque and Maria L. Duque, in pro per,  
complainants (Case 06-08-033)

Benigno Palacios and Esther Palacios, in pro per,  
complainants (Case 06-08-034)

Marisela Velasquez, in pro per, complainant  
(Case 06-08-035)

Ignacio Carillo and Dianna Carillo, in pro per,  
complainants (Case 06-08-036)

Jason W. Swenson and Maribel Swenson, in pro per,  
complainants (Case 06-08-037)

Charles E. Haynes, defendant, in pro per, representing  
himself and defendant Alpine Springs Mobile Park

## PRESIDING OFFICER'S DECISION

### Summary and Conclusion

This proceeding commenced with the filing of five formal complaints on August 23, 2006, by aggrieved tenants of Alpine Springs Mobile Park (Alpine Springs), a mobile home park located in Palmdale.<sup>1</sup> Defendant Charles E. Haynes (Haynes) and his wife own Alpine Springs. All of the complainants are residents of Alpine Springs.

Each complaint alleges in substance that Haynes recently installed water meters and instituted tiered water rates at Alpine Springs, that the rates are unreasonably high, and that the complainants were overcharged for water service since the new rates became effective.<sup>2</sup> The total overcharge alleged in each case was within the \$7,500 jurisdictional limit for the Commission's Expedited Complaint Procedure (ECP), and each case was initially designated to be heard in accordance with our ECP rules.

Although the Commission's jurisdiction in this matter appeared to be questionable, because it was uncertain whether Alpine Springs furnished water service only to residents of the mobile home park, during the initial stages of this proceeding facts came to light indicating that the complaints had invoked the

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<sup>1</sup> Case (C.) 06-08-033 (ECP), *Juan Duque and Maria Duque v. Charles E. Haynes and Alpine Springs Mobile Park*; C.06-08-034 (ECP), *Benigno Palacios and Esther Palacios v. Charles E. Haynes and Alpine Springs Mobile Park*; C.06-08-035 (ECP), *Marisela Velasquez v. Charles E. Haynes and Alpine Springs Mobile Park*; C.06-08-036 (ECP), *Ignacio Carrillo and Dianna Carrillo v. Charles E. Haynes and Alpine Springs Mobile Park*; and C.06-08-037 (ECP), *Jason W. Swenson and Maribel Swenson v. Charles E. Haynes and Alpine Springs Mobile Park*.

<sup>2</sup> C.06-08-037 also alleges that the defendants overcharged the complainants for electric service in January 2006. However, evidence received at the hearing demonstrates that this aspect of the complaint was settled, and therefore is not addressed in this decision.

Commission's jurisdiction pursuant to a statute that specifically addresses the reasonableness of rates and adequacy of service in circumstances present at Alpine Springs.<sup>3</sup> Consequently, the complaints were consolidated and converted into a single formal proceeding conducted in accordance with that statute, as explained below.

After conducting a full investigation of the reasonableness of Alpine Springs' water rates, as well as considering the adequacy of its water service, the Commission has determined that Alpine Springs' water rates are just and reasonable, and that its water service is adequate.<sup>4</sup> Although there is evidence that arithmetic errors may have been made in computing certain water bills, our statutory jurisdiction is narrow, allowing us only to determine whether Alpine Springs' rates are just and reasonable and its service is adequate. We do not have the power to award refunds to individual tenants who were overbilled. Tenants having such claims must pursue their remedies in court.

C.06-08-033, C.06-08-034, C.06-08-035, C.06-08-036 and C.06-08-037 are dismissed, and the consolidated proceeding is closed.

### **Procedural History**

The assigned administrative law judge (ALJ) initially set the complaint cases to be heard informally under ECP rules on November 14, 2006. Preliminary inquiry at the outset of the hearings revealed that Alpine Springs has its own water source, provides water service to tenants by means of its own

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<sup>3</sup> Public Utilities Code Section 2705.6.

<sup>4</sup> The Commission also received evidence concerning each of the individual claims of overbilling, but we have determined that we lack jurisdiction to resolve those individual claims. *See Discussion, infra.*

distribution system, and sells none of its water to anyone outside the park. In light of these facts, the allegation of excessive rates common to each of the complaints signified that the disputed overcharges should be investigated under Public Utilities Code Section 2705.6, as that statute specifically confers jurisdiction upon the Commission to determine whether the rates charged by a mobilehome park are just and reasonable, and whether the service provided is adequate.<sup>5</sup>

By ruling issued on November 22, 2006, the ALJ consolidated the five complaints into a single proceeding, terminated them as ECP matters, and ordered them to be resolved under Public Utilities Code Section 2705.6. The ruling also directed the Commission's Water Division (WD) to prepare a report (staff report) to assist in determining whether Alpine Springs' water rates are just

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<sup>5</sup> Public Utilities Code Section 2705.6 states:

- (a) A mobilehome park that provides water service only to its tenants from water supplies and facilities that it owns, not otherwise dedicated to public service, is not a water corporation. However, that mobilehome park is subject to the jurisdiction of the commission to the extent that, if a tenant complains about the water rates charged or service provided by the mobilehome park, the commission shall determine, based on all the facts and circumstances, whether the rates charged are just and reasonable and whether the service provided is adequate.
- (b) Complaints filed pursuant to subdivision (a) are subject to the provisions of this code and to the Rules of Practice and Procedure of the commission governing complaints and commission investigations.
- (c) The commission may afford rate relief or may order the mobilehome park to improve its water supply, facilities, and services on those terms that it finds just and reasonable, or both.
- (d) The public adviser created pursuant to Section 321 and necessary staff of the commission shall assist the complainant.

and reasonable, and whether its water service is adequate.<sup>6</sup> A formal evidentiary hearing (EH) was scheduled to follow the issuance of the staff report.

WD issued the staff report on January 16, 2007.<sup>7</sup> It contains detailed information about Alpine Springs' water system, tiered rates and service, and WD's conclusions about the reasonableness of the new rates and adequacy of the water service. The preparation of the report required WD to conduct an audit of Alpine Springs' expenses, revenues, and capital accounts, and to evaluate its revenues, expenses and Rate of Margin (ROM) for 2006.

The matter was heard in Palmdale on March 14, 2007. Evidence was received concerning the complainants' respective allegations of overcharges under the present rates, in addition to that pertaining to the general issues of reasonableness of the water rates and adequacy of the service. The hearing was concluded, and the matter was submitted, on March 14, 2007.

On July 26, 2007, the Commission extended the statutory deadline for resolving this proceeding until October 22, 2007. On October 18, 2007, the Commission further extended the statutory deadline until December 21, 2007.

### **Discussion**

The water system at Alpine Springs provides service to 52 metered customers, all of whom are residents of the mobile home park. Water is provided by a single 62-foot well and pump that produce 5.5 gallons per minute (gpm). The water is pumped to a 10,000 gallon storage tank, and from there to two pressure tanks for distribution to the tenants' connections.

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<sup>6</sup> The ALJ's ruling also requires all rulings and decisions in this matter to be translated into Spanish, and to be issued in both English and Spanish versions.

<sup>7</sup> The staff report was subsequently received as Exhibit 1 at the EH.

Until the system was metered, tenants paid a flat monthly rate of \$6.00 for water.<sup>8</sup> However, by 2005, the defendants noticed the occurrence of high water usage that was associated with certain tenants' use of their own washing machines in the park, an activity that is prohibited under Alpine Springs' rules. The outflow from the machines also disabled the park's septic system and contaminated the water supply, and for a short period the defendants found it necessary to notify tenants that the water was unfit to drink.

In response to those tenants' excessive water use the defendants installed water meters on all connections during 2005. At some point the defendants furnished 10% of the meters to the County of Los Angeles Department of Weights and Measures for testing in compliance with the Department's requirements. All were found to be functioning correctly.

On August 23, 2005, Haynes gave notice to tenants that, effective September 1 of that year, they would pay a rate of \$6.00 for the first 400 cubic feet (cu. ft.) of water used, and higher rates above that level. The notice specifically stated that the change in rates was necessary to curtail the high water usage caused by the unauthorized use of washing machines in some homes, and to relieve the strain on the park's sewer system. Under the new rate structure the rate for the 200 cu. ft. increment of water used above the first 400 cu. ft. is \$16.00/100 cu. ft. (ccf); \$20.00/ccf for the next 200 cu. ft. increment; and \$25.00/ccf for any usage above 800 cu. ft. With the implementation of these tiered rates, many tenants found that their monthly bills increased dramatically when they used more than 400 cu. ft. of water per month, resulting in rate shock

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<sup>8</sup> According to the staff report, this flat rate was in effect from 2001 through 2005.

for some. Certain tenants also noticed arithmetic errors in their bills, which they have been unable to rectify by dealing directly with the defendants.

As part of preparing the staff report WD reviewed the tenants' water usage records for October 2006 and compared them to records of prior usage. The records disclosed that of the 52 customers in Alpine Springs, 32 used less than 400 cu. ft; nine used between 401 and 600 cu. ft.; seven used between 601 and 800 cu. ft.; and four used more than 800 cu. ft. during that month. Thus, 62 percent of Alpine Springs' customers used 400 or fewer cu. ft. of water and continued to pay \$6.00 per month for water service during a temperate month between summer and winter after the new tiered rates went into effect.

WD determined that Alpine Springs has a revenue requirement of \$18,903 to pay operating expenses and to earn a return based upon a 25 percent ROM.<sup>9</sup> However, the defendant collected revenues of only \$18,167 in 2006, \$736 below this revenue requirement. WD also determined that Alpine Springs' new rate structure is designed to encourage and promote conservation, and that its water supply is limited. The staff report thus concludes that Alpine Springs' water rates are not unreasonable.

WD also found no evidence of problems with Alpine Springs' water service (other than those created by the prohibited use of washing machines). The County of Los Angeles Department of Health Services confirmed that the defendant had no water quality compliance issues for 2006.

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<sup>9</sup> WD used the return on margin methodology in accordance with Decision 92-03-093 (April 30, 1992), and applied the ROM for class D water utilities of 25 percent based on the February 27, 2006 implementing memorandum establishing that rate for use in 2006.

The conclusions of the staff report are well supported by the audit findings. The recently implemented tiered rate structure is designed to promote water conservation in the park, a necessity in view of the level of production of its well, and the cost of purchasing replacement water is high. Although some customers experienced rate shock because of their high water use, nearly two-thirds had no change in their water bills in a month of moderate use, which demonstrates that they satisfied their basic needs while conserving water. This is precisely the result sought by the defendant in response to the limitations of the Alpine Springs system, and that goal is entirely reasonable. In light of these circumstances, we find that Alpine Springs' water rates are just and reasonable, and that the service provided is adequate.

We decline to adjudicate any of the claims that certain individual water bills were not calculated properly, despite our awareness of evidence that some of these claims may be meritorious, because we lack the jurisdiction to do so under Section 2705.6. The statutory language is explicit and narrowly drawn. Alpine Springs' water system is not a water company, and therefore not a regulated public utility. Section 2705.6 only enlarges our jurisdiction to the extent of granting power to the Commission with respect to such a system to examine whether rates charged are just and reasonable (and then only when a tenant complains), but not the power to resolve individual billing disputes. *See, e.g., Silva v. General Telephone Company of California* (1986), D.86-11-073 in C.86-06-008, unpublished decision, p. 8. (" 'Just and reasonable' does not refer to individual customers, but the lawfulness of tariffed rates.") Aggrieved tenants who believe they have been overbilled for water service must seek recourse in the State's courts if they cannot resolve their disputes with the mobile home park

owner.<sup>10</sup> However, we strongly encourage the parties to attempt to resolve past billing errors by talking to each other before turning to the courts for relief.

### **Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Victor D. Ryerson is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Each of the complainants in C.06-08-033, C.06-08-034, C.06-08-035, C.06-08-036, and C.06-08-037 (collectively, the complaints) is a tenant of Alpine Springs Mobile Park in Palmdale.
2. Alpine Springs is a mobile home park that is owned by defendant Charles E. Haynes.
3. The substance of the complaints is that the water rates charged by Alpine Springs are unjust and unreasonable.
4. Certain of the complaints additionally allege that the defendants overcharged the respective complainants for water under the current Alpine Springs water rates.
5. C.06-08-037 also alleges that the defendants overcharged the complainants for electric service in January 2006. However, evidence received at the evidentiary hearing demonstrates that this aspect of the complaint was settled, and that claim is not pending before the Commission.
6. Alpine Springs has its own water source.

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<sup>10</sup> In light of the amounts of the overcharges alleged in the five complaints before us, it would appear that these disputes could be resolved by the small claims division of the Superior Court (small claims court). See Code of Civil Procedure Sections 116.210, 116.220, subdivision (a)(1), and 116.221.

7. Alpine Springs provides water service to its tenants by means of its own distribution system.

8. Alpine Springs does not sell water to anyone other than tenants of its mobile home park.

9. Alpine Springs serves 52 customers with its water system.

10. Alpine Springs' water system produces 5.5 gpm.

11. Water that must be purchased for Alpine Springs' mobile home park when its own supply is inadequate to serve its tenants is expensive relative to the cost of water produced by its own system.

12. The defendant installed water meters and adopted its current tiered rates in response to incidents of excessive use of water by certain tenants, and because excess outflow of water used by certain tenants in violation of Alpine Springs' tenant rules caused contamination of its septic system and water supply.

13. Under the previous flat rate, a tenant paid \$6.00 per month for water service, irrespective of the amount of water use.

14. Alpine Springs' recently-adopted tiered rates encourage water conservation by charging progressively more per cubic foot in each tier for consumption of larger quantities of water.

15. Under the tiered rates a tenant obtains up to 400 cu. ft. of water for the monthly rate of \$6.00. This volume of water is adequate to provide for a tenant's basic water service needs, and the rate per cubic foot is the same as it was under the preexisting flat rate.

16. Alpine Springs collected revenues of \$18,167 in 2006, which was \$736 less than its 2006 revenue requirement.

17. There is no relevant evidence of inadequate water service in the record in this proceeding.

**Conclusions of Law**

1. Pursuant to Public Utilities Code Section 2705.6, the Commission has jurisdiction to determine whether the defendants' water rates are just and reasonable, and whether the service is adequate, in this proceeding.
2. Based upon all of the facts and circumstances in the record in this proceeding, the rates charged by the defendant for water service at Alpine Springs are just and reasonable.
3. There is no basis in the record to conclude that the water service provided by the defendants at Alpine Springs is not adequate, and the Commission therefore should presume that it is adequate.
4. The Commission lacks jurisdiction to adjudicate individual claims that Alpine Springs overbilled tenants in violation of its water rates, and complaints based upon any such claim should be dismissed.

**O R D E R**

1. The rates changed for water service by the defendants, Charles E. Haynes and Alpine Springs Mobile Park, are just and reasonable.
2. The water service provided by the defendants is adequate.
3. Case (C.) 06-08-033, C.06-08-034, C.06-08-035, C.06-08-036 and C.06-08-037 are dismissed.
4. The consolidated proceeding is closed.

This order is effective today.

Dated January 7, 2008, at San Francisco, California

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **MOTION TO DISMISS CLAIMS OF LUCAS HERNANDEZ** on all known parties to Case No. C. 09-11-019 before the Public Utilities Commission of the State of California by transmitting an **e-mail** message with the document attached to each person named in the official service list as follows:

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Megan Beaman Carlson, Esq.  
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Laurel Firestone  
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Commissioner Dian Grueneich  
[dgx@cpuc.ca.gov](mailto:dgx@cpuc.ca.gov)

Administrative Law Judge Gary Weatherford  
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and by **mailing** a properly addressed copy by first-class mail with postage prepaid to each person named in the official service list as follows:

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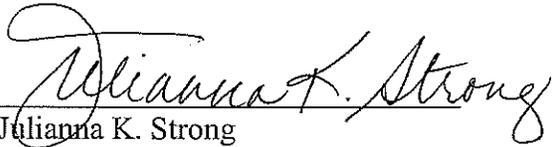
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Executed on May 12, 2010 at Riverside, California.

  
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