



**FILED**

03-03-10  
04:59 PM

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

Jurupa Community Services District,

Complainant,

v.

Empire Water Company, LLP,

Defendant.

Case No.: C. 09-03-024  
(Filed March 23, 2009)

**DECLARATION OF THOMAS J. WINGARD FILED IN SUPPORT OF  
DEFENDANT'S REPLY TO COMPLAINANT'S  
RESPONSE/COMMENTS TO DEFENDANT'S EXHIBIT NO. 109**

<b>DEFENDANT</b>	<b>ATTORNEY FOR DEFENDANT</b>
Empire Water Company, LLP Attn: Peter Jensen, C.E.O. 25 Orchard Lake Forest, CA 92630 Telephone: (949) 215-1100 Telephone: (619) 222-1493 Email: <a href="mailto:pljensen@empirewater.com">pljensen@empirewater.com</a>	Edward J. Casey (State Bar No. 119571) Email: <a href="mailto:edward.casey@alston.com">edward.casey@alston.com</a> Tammy L. Jones (State Bar No. 232693) Email: <a href="mailto:tammy.jones@alston.com">tammy.jones@alston.com</a> ALSTON & BIRD LLP 333 South Hope Street, Sixteenth Floor Los Angeles, California 90071 Telephone: (213) 576-1000

DECLARATION OF THOMAS J. WINGARD FILED IN SUPPORT OF DEFENDANT'S REPLY  
TO COMPLAINANT'S RESPONSE/COMMENTS TO DEFENDANT'S EXHIBIT NO. 109

DECLARATION OF THOMAS J. WINGARD FILED IN SUPPORT OF  
DEFENDANT'S REPLY TO COMPLAINANT'S  
RESPONSE/COMMENTS TO DEFENDANT'S EXHIBIT NO. 109

I, Thomas J. Wingard, declare and state:

1. I am an attorney duly licensed to practice law before this Court and all courts of the State of California and am a partner with the law firm of Alston & Bird LLP, attorneys of record herein for Defendant Empire Water Company LLP ("Empire"). I make this declaration in support of Defendant's Reply To Complainant's Response/Comments To Defendant's Exhibit No. 109.

2. At the hearing on January 6, 2010, in response to arguments raised by counsel for Jurupa Community Services District ("JCSD") that 350 Inch Water Company ("350 IWC") did not have the necessary assets to deliver water to the Patriot High School and the Indian Hills Golf Course, I offered to prepare a closing memorandum detailing what assets of 350 IWC were purchased by Empire.

3. On January 15, 2010, my office submitted a draft closing memorandum to counsel for JCSD for review and comment. After reviewing the draft closing memorandum, JCSD requested the memorandum be amended to provide a closing date and a list of the assets purchased by Empire from 350 IWC pursuant to the Stock and Asset Purchase Agreement dated May 10, 2007, as amended pursuant to the Assignment and Amendment Agreement, dated December 21, 2007.

4. On January 26, 2010, my office provided a Final Closing Memorandum to counsel for JCSD incorporating the comments made above.

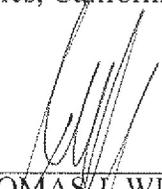
5. On February 16, 2010, my office inadvertently filed the draft closing memorandum, rather than the Final Closing Memorandum. Attached as Exhibit "A" is a true and correct copy of the Final Closing Memorandum.

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

///

///

Executed on March 3, 2010, at Los Angeles, California.



THOMAS J. WINGARD  
Declarant

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# **EXHIBIT A**

## AGREEMENT

This Agreement (the “**Agreement**”) is entered into as of January 15, 2010, by and among Empire Water Corporation, a Nevada corporation (“**Empire**”), Indian Hills Water Conservation Corporation, a California corporation (“**IHWCC**”), West Riverside Canal Company, a California corporation (the “**Canal Company**”), West Riverside 350 Inch Water Company, a California mutual benefit corporation (“**350IWC**,” and together with the Canal Company, the “**Water Companies**”), Henry C. Cox II, an individual (“**Cox**”) and John L. West, an individual (“**West**,” and together with IHWCC and Cox, the “**Seller Parties**”). Empire, the Water Companies and the Seller Parties are sometimes referred to herein individually as a “party” or together as the “parties”. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in that certain Stock and Asset Purchase Agreement, dated as of May 10, 2007, by and among Basin Water Resources, Inc., a Delaware corporation (“**BWRI**”), on the one hand, and the Water Companies and the Seller Parties, on the other hand (the “**Purchase Agreement**”), as such was amended pursuant to that certain Assignment and Amendment Agreement, dated as of December 21, 2007 (the “**Amendment**”), copies of which are attached hereto as *Exhibits A and A-1*, respectively, and incorporated herein by reference (together, the Purchase Agreement and Amendment are hereinafter the “**Purchase Agreement**”).

## RECITALS

A. BWRI, the Water Companies and the Seller Parties previously entered into the Purchase Agreement, pursuant to which such parties intended that BWRI would acquire the Business by purchasing the Shares or Assets from the Seller Parties.

B. On December 28, 2007, the Closing occurred.

C. At the Closing, Empire elected to purchase certain Assets owned by the Seller Parties, and the parties now desire to commemorate and identify the Assets purchased by Empire.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

## AGREEMENT

1.1 **Assets Purchased.** The parties hereby confirm that the following constitute the Assets purchased from the Seller Parties pursuant to the Asset Purchase Election, which Assets include but are not limited to:

(a) 176.03 shares of the common stock of 350IWC (the “**350IWC Shares**”) that were owned by IHWCC, which constitutes 82.40 percent of the issued and outstanding shares of the capital stock of 350IWC (provided however, that the parties acknowledge that Cox and West jointly retained ownership of 0.33 shares (0.16%) of the common stock of 350IWC); and

(b) All of the assets owned by the Seller Parties and the Water Companies set forth on Schedule 1.1 to the Purchase Agreement, including, without limitation, that certain canal described on Schedule 1.1 and used in operation of the Business (the “**Canal**”), with the exception of the following assets which were retained by 350 IWC:

- (i) The wells and associated pumping equipment used in pumping and providing water to Indian Hills and the Jurupa Unified School District
- (ii) Historical Rights (as defined in the Purchase Agreement)
- (iii) Shares in WRCC

1.2 **Further Assurances.** Notwithstanding the foregoing, the parties agree and acknowledge that in the event Empire cannot or does not record the deed evidencing the transfer of the Canal property to Empire, they shall execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary, appropriate or desirable to effectuate, carry out and cause, on behalf of the Canal Company, the Canal Company to operate in a manner consistent with the business to be conducted by Empire and its subsidiaries.

1.3 **Dates of Notices and Actions.** All notices required to be given hereunder shall be effective as of the date of delivery. If the date of any notice required to be given hereunder or action required to be taken hereunder falls on a weekend or holiday, such notice or action may be delivered or taken at any time through the next occurring business day.

1.4 **Jurisdiction; Service of Process.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against any of the parties in the United States District Court for the Central District of California in Los Angeles, California, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

1.5 **Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (i) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party, (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given, and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

1.6 **Entire Agreement.** All prior agreements, representations and understandings between the parties are incorporated in this Agreement and, together with the Purchase Agreement, constitute the entire contract between the parties. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included herein. This Agreement may not be contradicted by evidence of any prior or contemporaneous written or oral representations, agreements or understandings, whether express or implied. The parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding, if any, involving this Agreement. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by each of the parties.

1.7 **Assignment, No Third-Party Rights.** No party may assign any of its rights or obligations under this Agreement without the prior written consent of the others, which consent will not be unreasonably withheld or delayed. Subject to the foregoing, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and permitted assigns.

1.8 **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

1.9 **Section Headings; Construction.** The headings of sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding section or sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

1.10 **Attorney's Fees.** The prevailing party in any litigation, arbitration, mediation, bankruptcy, insolvency or other proceeding relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party(ies) all costs, expenses and reasonable attorney's fees (including expert witness and other consultants' fees and costs) relating to or arising out of (i) the proceeding (whether or not the proceeding proceeds to judgment) and (ii) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses and actual attorney's fees.

1.11 **Governing Law.** This Agreement will be governed by the laws of the State of California without regard to conflicts of laws principles.

1.12 **Further Assurances; Additional Documents and Acts.** Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary, appropriate or desirable to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby and under the Purchase Agreement.

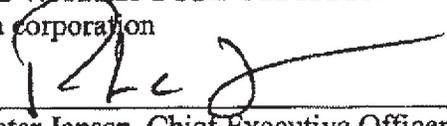
1.13 **Counterparts; Facsimile.** This Agreement may be executed in one or more counterparts, all of which when fully executed and delivered by all parties hereto and taken together shall constitute a single agreement, binding against each of the parties. To the maximum extent permitted by law or by any applicable governmental authority, any document may be signed and transmitted by facsimile with the same validity as if it were an ink-signed document. Each party represents and warrants that the person signing this Agreement on its behalf is duly authorized (on behalf of the respective entity for which such signatory has acted) to execute and deliver this instrument and any other document related to this transaction, thereby fully binding each such respective entity.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

**EMPIRE:**

**EMPIRE WATER CORPORATION**  
a Nevada corporation

By:   
Name: Peter Jensen, Chief Executive Officer

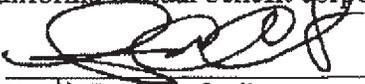
**WEST RIVERSIDE:**

**WEST RIVERSIDE CANAL COMPANY**  
a California corporation

By:   
Name: HENRY COX  
Its: PRES.

**350IWC:**

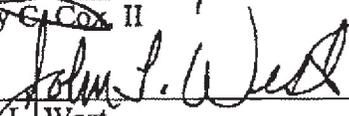
**WEST RIVERSIDE 350 INCH WATER COMPANY**  
a California mutual benefit corporation

By:   
Name: HENRY COX  
Its: PRES

**COX:**

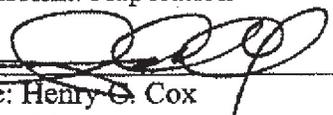
By:   
Henry G. Cox, II

**WEST:**

By:   
John L. West

**IHWCC:**

**INDIAN HILLS WATER CONSERVATION CORPORATION**  
a California corporation

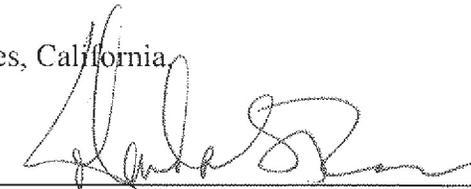
By:   
Name: Henry G. Cox  
Its: President

2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I have this day served a copy of **DECLARATION OF THOMAS J.**  
4 **WINGARD FILED IN SUPPORT OF DEFENDANT'S REPLY TO COMPLAINANT'S**  
5 **RESPONSE/COMMENTS TO DEFENDANT'S EXHIBIT NO. 109** on all known parties to  
6 proceeding C.09-03-024 by transmitting an e-mail message with the document attached to each party  
7 in the official service list.

8 Julie Hayward Biggs, Esq.	<a href="mailto:jbiggs@bwslaw.com">jbiggs@bwslaw.com</a>
9 Gregory M. Murphy, Esq.	<a href="mailto:gmurphy@bwslaw.com">gmurphy@bwslaw.com</a>
10 Gary Weatherford, ALJ	<a href="mailto:gw2@cpuc.ca.gov">gw2@cpuc.ca.gov</a>
11 Peter Jensen	<a href="mailto:pljensen@empirewater.com">pljensen@empirewater.com</a>

12 Executed on March 3, 2010, at Los Angeles, California.



13  
14  
15  
16 Yolanda S. Ramos

17 **NOTICE**

18 Parties should notify the Process Office, Public Utilities Commission,  
19 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any  
20 change of address to insure that they continue to receive documents.  
21 You must indicate the proceeding number on the service list on which  
22 your name appears.

23 \*\*\*\*\*  
24 The Commission's policy is to schedule hearings (meetings,  
25 workshops, etc.) in locations that are accessible to people with  
26 disabilities. To verify that a particular location is accessible, call:  
27 Calendar Clerk (415) 703-1203.

28 If specialized accommodations for the disabled are needed, e.g., sign  
language interpreters, those making the arrangements must call the  
Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-  
5282 at least three working days in advance of the event.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On March 3, 2010, I served the document(s) described as **DECLARATION OF THOMAS J. WINGARD FILED IN SUPPORT OF DEFENDANT'S REPLY TO COMPLAINANT'S RESPONSE/COMMENTS TO DEFENDANT'S EXHIBIT NO. 109** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

**\*SEE ATTACHED SERVICE LIST**

BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.

BY FEDERAL EXPRESS  UPS NEXT DAY AIR  OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by  FEDERAL EXPRESS  UPS  Overnight Delivery [specify name of service: ] with delivery fees fully provided for or delivered the envelope to a courier or driver of  FEDERAL EXPRESS  UPS  OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

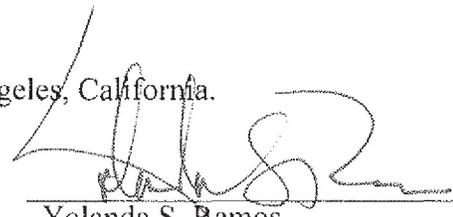
BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

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

[Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 3, 2010, at Los Angeles, California.

  
\_\_\_\_\_  
Yolanda S. Ramos

1 *Jurupa Community Services District v. Empire Water Company, LLP*  
2 PUC Case No. Case No.: C. 09-03-024

3 **SERVICE LIST**

4  
5 Julie Hayward Biggs, Esq. Attorneys for Complainant  
6 Gregory M. Murphy, Esq. Jurupa Community Services District  
7 Burke Williams & Sorensen, LLP  
8 2280 Market Street, Suite 300 Telephone: (951) 788-0100  
9 Riverside, CA 92501 [jbiggs@bwsllaw.com](mailto:jbiggs@bwsllaw.com)  
[gmurphy@bwsllaw.com](mailto:gmurphy@bwsllaw.com)

10 Gregory M. Murphy Esq.  
11 Burke Williams & Sorenson LLP Telephone: (213) 236-2835  
12 444 South Flower Street, Suite 2400 [gmurphy@bwsllaw.com](mailto:gmurphy@bwsllaw.com)  
13 Los Angeles, CA 90071

14 Gary Weatherford Assigned ALJ  
15 California Public Utilities Commission Telephone: (415) 703-2782  
16 Division Of Administrative Law Judges [gw2@cpuc.ca.gov](mailto:gw2@cpuc.ca.gov)  
17 505 Van Ness Avenue  
18 Room 5020  
19 San Francisco, CA 94102-3214

20 Peter Jensen, C.E.O.  
21 Empire Water Company, LLP  
22 25 Orchard  
23 Lake Forest, CA 92630

24 Eldon Horst  
25 General Manager  
26 Jurupa Community Services District  
27 11201 Harrel Street  
28 Mira Loma, CA 91752