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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

12 **CALIFORNIA STATE WATER**  
 13 **RESOURCES CONTROL BOARD,**  
 14 **DIVISION OF DRINKING WATER,**  
 Petitioner,  
 15  
 16 v.  
 17 **BIG BASIN WATER COMPANY, INC.,**  
 18 **THOMAS JAMES MOORE, and**  
 19 **SHIRLEY MOORE,**  
 Respondents.

Case No. 23CV01615  
**[PROPOSED] ORDER OF  
 APPOINTMENT OF RECEIVER FOR  
 THE BIG BASIN WATER COMPANY**

23 The Court, having considered the petition filed by the California State Water Resources  
 24 Control Board, Division of Drinking Water (the "Division") for the appointment of a receiver, as  
 25 well as the papers, evidence and arguments submitted in this matter, and good cause appearing  
 26 therefore, makes the following findings:

27 1. Respondents Big Basin Water Company, Inc., a California corporation, and its sole  
 28 shareholders Thomas James Moore and Shirley Moore (collectively, the Owners) own, operate

1 and are in possession of the public water system known as Big Basin Water Company (the  
2 System).

3 2. The System is a public water system with its principal office and place of business  
4 in Santa Cruz County.

5 3. Health & Safety Code § 116665 authorizes this Court to appoint a receiver to  
6 assume possession of a public water system's property and to operate the system upon petition by  
7 the Division whenever the Division determines that a public water system is unable or unwilling  
8 to adequately serve its users, has been actually or effectively abandoned by its owners, or is  
9 unresponsive to the rules or orders of the Division.

10 4. The Division has made the determination that the System is unable or unwilling to  
11 adequately serve its users, and that the System is unresponsive to the rules or orders of the  
12 Division.

13 5. The Court finds that an order appointing a receiver is required, as the System is  
14 unable or unwilling to adequately serve its users and it is unresponsive to the rules or orders of  
15 the Division.

16 6. The Court further finds that Silver & Wright LLP possesses the necessary capacity  
17 and experience to serve as a receiver of the System, and is willing and able to perform the tasks of  
18 receiver.

### 19 **APPOINTMENT OF COURT RECEIVER**

20 **THEREFORE, IT IS HEREBY ORDERED** that a receiver be appointed over the  
21 System, with full powers granted under Health & Safety Code § 116665 and Code of Civil  
22 Procedure section 564, *et seq.*, subject to further requirements of this Order and any further orders  
23 of this Court. The court receiver shall: (1) execute and file a receiver's oath with this Court; and  
24 (2) disclose to all parties any financial relationship between the court receiver and any person or  
25 entity hired to assist in the management of the receivership property.

#### 26 **A. Assumption of Jurisdiction and Appointment of Receiver**

27 7. The Court hereby assumes jurisdiction and custody over the System. Until the  
28 receiver is discharged and the receivership terminated, the Court retains jurisdiction over this

1 judicial proceeding for all purposes, including but not limited to: amending, supplementing, or  
2 deleting any provision of this order; enforcing compliance with or punishing violations of this  
3 order; and ordering any additional relief that may be reasonably necessary or appropriate.

4 8. Until further order of this Court, Silver & Wright LLP is hereby appointed to serve  
5 without bond as receiver for the System (the Receiver).

6 9. No individual, person, or entity shall take any of the following actions without  
7 leave of the Court: sell any interest of the System; institute any judicial proceeding against the  
8 System; institute any judicial proceeding against the Receiver relating to the System or the  
9 Receiver's actions with respect to the System; create or enforce any lien on the System; secure  
10 any indebtedness with the System's assets or property as collateral; or cause to be issued, served,  
11 or levied upon the System any judicial summons, subpoena, attachment, or writ of execution.

12 10. The Receiver or the Division may at any time apply to this Court for further  
13 instructions and orders for additional powers necessary to enable the Receiver to properly  
14 perform the Receiver's duties, or to replace the Receiver if the purposes of the receivership are  
15 not being served. Notice of any such application shall be provided to the Receiver, the Division,  
16 and the Owners. The Receiver is appointed for purposes of stabilizing the System, returning it to  
17 compliance with California's Safe Drinking Water Act (the Act) and implementing regulations,  
18 and transitioning the System to the control of an individual or entity that will operate the System  
19 in compliance with the Act after the receiver is discharged.

20 11. The Receiver shall not be held personally liable for any good faith, reasonable  
21 effort to assume possession of and operate the System in compliance with this Order.

22 12. The Receiver is authorized, in the exercise of his discretion, and subject to the  
23 control of this Court and the laws regarding receivership, to do all acts necessary for the proper  
24 and lawful conduct of the receivership. Specifically, in addition to the full powers granted to  
25 court receivers under Health & Safety Code § 116665 and Code of Civil Procedure section 564, *et*  
26 *seq.*, the Receiver has the following authority and duties and is subject to the terms below that  
27 shall govern the receivership.  
28

1           **B. Power and Authority of the Receiver**

2           13. The Receiver immediately shall assume full and complete possession and control  
3 of the System in its entirety, including all property, real or personal, tangible or intangible, that is  
4 in any manner used in or for the System's operations, or the delivery of water, and all facilities,  
5 components, books, records, accounts, and other property of the System. The Receiver's powers  
6 extend to all the System's funds, properties, accounts, insurance policies, and assets of whatever  
7 kind and wherever situated. The Owners, and all agents of the System, are ordered to inform the  
8 Receiver of all the assets of the System—including but not limited to real property, financial, and  
9 banking assets—and to cooperate in the orderly transition of control of all System assets and  
10 accounts to the Receiver. The System's assets include but are not limited to Assessors Parcel  
11 Number (APN) 83-251-71 and Union Bank account numbers 6712020-100, 0051544260 and  
12 0083114074.

13           14. The Receiver shall have all powers, authorities, rights, and privileges heretofore  
14 possessed by the Owners in relation to the System under applicable state and federal law, and by  
15 the governing charters, by-laws, articles, and/or governing agreements, in addition to all powers  
16 and authority of a receiver at equity, and all powers conferred upon a receiver by the provisions of  
17 Health & Safety Code § 116665 and Code of Civil Procedure § 564, *et seq.*

18           15. The Receiver shall manage, maintain, preserve, care for, operate, and control the  
19 System. The Receiver may expend the System's funds and revenues for operation and  
20 maintenance of the System and repairs and improvements to the System and may accumulate a  
21 reasonable reserve on behalf of the System. The Receiver is authorized and directed to take, hold,  
22 and maximize for the System's use, all property and assets to which the System has possession or  
23 may be entitled. The Receiver shall have the sole power to contract on behalf of the System and  
24 on matters involving or relating to the System. The Receiver is authorized to rent, lease or  
25 contract in connection with any System asset, liability, or other property on such terms as the  
26 Receiver deems proper.

27           16. The Receiver may retain current employees, consultants, and vendors for the  
28 System, and engage new employees, consultants, and vendors for the System. The Receiver may

1 pay employees, consultants, and vendors a reasonable amount for goods and services rendered,  
2 which shall be paid from the System's revenue or reserves at direct cost, without any markups or  
3 fees. The Receiver shall provide notice to the Division of intent to employ a consultant and shall,  
4 upon request, provide the Division with a copy of the consultant's contract. The Receiver shall  
5 disclose to the Division any personal or financial relationship between the Receiver and the  
6 consultant.

7 17. The Receiver may, on behalf of the System, seek, apply for, accept, and administer  
8 any grant or loan funding that may be made available by the State of California or other public or  
9 private sources for upgrading the existing water system, making repairs, consolidating the System  
10 with another system, facilitating the transfer of the System, and for related evaluation and  
11 planning activities, as the Receiver deems necessary and appropriate.

12 18. The Receiver shall collect from the System's customers payment for any fees,  
13 surcharges, or other amounts the System is or may be authorized to charge to the customers in  
14 connection with the provision of water and related services.

15 19. The Receiver may take any action necessary with the California Public Utilities  
16 Commission, including seeking rate adjustments to pay System's expenses and fund  
17 improvements to the System or for changes to the System's tariff.

18 20. The Receiver may purchase property insurance, liability insurance, and any other  
19 form of insurance that is proper for the System and liability insurance for the Receiver in  
20 connection with his activities related to the System.

21 21. The Receiver may institute ancillary judicial or administrative proceedings in this  
22 State as necessary to assume possession of, operate, manage, control, preserve, or protect the  
23 System, including to obtain possession or control of any System asset or enforce the System's  
24 rights against any party.

25 22. The Receiver may apply to the court for authority to reject any contract presently  
26 in force that relates to or involves the System, on the giving of notice to the contracting parties as  
27 provided in their contract.  
28

1           23.     The Receiver must seek Court approval to hire outside legal counsel, if necessary  
2 to assist with the duties that fall within the Receiver’s powers and authority as described in this  
3 Order.

4           24.     The Receiver may, upon notice to the Owners, the Division, and any other  
5 interested party who has requested notice, and subject to confirmation by this Court, sell or  
6 transfer any of the System's real or personal property in the Receiver's possession, or the System  
7 as a whole. Confirmation will generally be granted upon a showing that the sale or transfer is fair  
8 to the respective parties and is in the best interest of the System's customers.

9           25.     The Receiver is authorized to access and control all components of the System  
10 necessary to operate the System, including real property used in connection with the System or to  
11 deliver water.

12           26.     The Receiver is authorized to immediately borrow up to \$100,000 on behalf of the  
13 receivership estate, secured as a super-priority lien against the System and the assets of the  
14 System, for purposes of complying with these orders and any other orders of this Court, securing  
15 the System, inspecting it, insuring it, operating it, and developing a viable plan in accordance with  
16 this Court’s orders.

17           27.     As approved by the Court, the Receiver may borrow funds as necessary to pay for  
18 the operation and rehabilitation of the System and to pay the costs and debts of the receivership  
19 estate. All funds borrowed by the Receiver on behalf of the receivership estate shall be entitled to  
20 become super-priority liens against the System and the assets of the receivership estate  
21 superseding all other interests. The Receiver may issue and record Court Receiver’s Certificates  
22 of Indebtedness (“Certificates”) to evidence and secure the debts of the receivership estate. The  
23 debt evidenced by the Certificates shall be due and payable upon completion of the Receiver’s  
24 duties hereunder. If the Certificates cannot be immediately satisfied when they become due, the  
25 Receiver may apply to this Court to sell the assets of the System and the receivership estate free  
26 and clear of all subordinate liens and encumbrances pursuant to Code of Civil Procedure section  
27 568.5.

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1           28.     Should any lawful order issued by the Receiver, under the authority granted herein,  
2 be refused, the Receiver is authorized to enlist the assistance of any duly authorized law  
3 enforcement officials or Sheriff deputies and, further, that such law enforcement officials and  
4 Sheriff deputies are authorized to employ all reasonably necessary measures to secure cooperation  
5 and compliance with any lawful order issued by the Receiver, including but not limited to, the use  
6 of forced entry into the System or any real assets of the receivership estate should consent to enter  
7 be refused.

8           29.     The Receiver's liability in any action against the System, the receivership estate,  
9 or the Receiver in its capacity as this Court's receiver shall be limited to the assets of, and shall be  
10 paid by, the receivership estate. The Receiver shall be defended and indemnified by the  
11 receivership estate within the scope of the Receiver's duty pursuant to this appointment.

12           **C.     Duties of the Receiver**

13           30.     The Receiver shall: incur on behalf of the System the risks and obligations  
14 ordinarily and reasonably undertaken by an owner, manager, or operator of a similar business; pay  
15 reasonable business expenses; and pay any taxes, assessments, or fees due during the period of  
16 the receivership.

17           31.     The Receiver shall establish an account in the name and for the benefit of the  
18 System at a financial institution where deposits are guaranteed or insured under federal law and  
19 shall deposit funds received in connection with the receivership into this account. The Receiver  
20 shall use its best efforts to place existing accounts used to conduct and maintain the System's  
21 business in the name of the Receiver.

22           32.     The Receiver shall collect the accounts receivable and all other obligations owing  
23 to the System, shall bring an action or actions, if necessary in the bests interests of the  
24 receivership estate, to collect obligations owed to the System, and shall settle and compromise  
25 any of the accounts receivable, debts, or obligations whenever the Receiver shall deem it  
26 advisable to do so, on such terms and conditions as appear to the Receiver to be justifiable.

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1           33.     The Receiver shall provide monthly reports to the Division with a copy to the  
2 Owners. These reports shall conform to the requirements of Cal. Rules of Court, Rule 3.118, and  
3 any amendments thereto.

4           34.     The Receiver shall ensure the System complies with the Act and expeditiously take  
5 all steps necessary to bring the System into compliance with the Act and the Division's citations,  
6 compliance orders and directives.

7           35.     Within 14 days of obtaining a verified list of the Systems customers, the Receiver  
8 shall file a report with the Division confirming that the Receiver has notified the System's  
9 customers of its contact information and any operational and emergency contact changes.

10          36.     Within 30 days of this Court's order, the Receiver shall file a report with the  
11 Division, with supporting documentation, confirming that the Receiver has: (a) identified the  
12 individual or company that will be operating the System on a day-to-day basis (the "System  
13 Operator"); (b) confirmed the System Operator is properly certified and skilled at performing the  
14 necessary tasks; and (c) entered an agreement with the System Operator specifying which  
15 activities the System Operator will perform when on-site. The Receiver may continue to employ  
16 the System's current operator or retain a new operator, at the Receiver's discretion.

17          37.     Within 60 days of entering into the agreement with the System Operator, the  
18 Receiver shall file a report with the Division, with supporting documentation, confirming that the  
19 Receiver has: (a) developed emergency contingency plans for system failures; (b) developed  
20 contractor contact lists for performing emergency activities; (c) prepared an operations plan and  
21 submitted it to the Division for approval; and (d) prepared a water conservation plan and  
22 submitted it to the Division for approval.

23          38.     Within 120 days of entering into the agreement with the System Operator, the  
24 Receiver shall submit to the Division for approval a plan for bringing the System into compliance  
25 with the Act and the Division's citations and compliance order (the "Compliance Plan"). The  
26 Compliance Plan shall, at minimum, contain the following elements with deadlines for  
27 completing each element: (a) conduct source capacity planning study and projected demand  
28 analysis in accordance with waterworks standards; (b) identify potential alternatives for



1 addressing water quantity issues; (c) obtain cost estimates for potential alternatives; (d) select  
2 preferred alternative; (e) complete plans and specifications for preferred alternative; (f) secure  
3 funding for preferred alternative; (g) construct and permit preferred alternative; and (h) draft plan  
4 for System's management, operation and maintenance post-receivership. Upon the Division's  
5 approval, the Receiver shall lodge this Compliance Plan with the Court, with notice to the  
6 Owners. On or before March 1, June 1, September 1, and January 1 of each calendar year  
7 following the appointment of the Receiver, the Receiver shall submit a report to the Division and  
8 Owners that describes the steps taken in connection with the Compliance Plan, with supporting  
9 documentation. If the Receiver determines that modifications to the Compliance Plan are  
10 necessary, the Receiver shall submit proposed modifications to the Division for approval, and  
11 upon approval, lodge the modified Compliance Plan with the Court, with notice to the Owners.

12 39. Within 90 days of entering into the agreement with the System Operator, the  
13 Receiver shall prepare an inventory of all property possessed under this order and submit this  
14 inventory to the Court, with copies to the Division and the Owners. The Receiver must promptly  
15 file a supplemental inventory of any subsequently obtained property.

16 40. On or before January 1 of each calendar year, the Receiver shall submit a proposed  
17 annual budget to the Court for approval, with notice to the Division and the Owners.

18 41. The Receiver's deadlines in this Order shall be interpreted as instructional  
19 objectives, but the Receiver shall be granted extensions as is reasonably necessary based upon the  
20 unknown circumstances of this case as they arise. Assuming control of the System is a massive  
21 undertaking with tremendous unknowns and unpredictable circumstances. The Receiver is blind  
22 to the actual conditions of the System, and it is unknown what level of cooperation the Receiver  
23 will receive upon appointment and whether the Receiver will be afforded sufficient resources to  
24 meet the demands of this appointment. The Receiver is not responsible for the conditions of the  
25 System it is accepting appointment to correct, and the Receiver shall be afforded significant  
26 latitude as it endeavors to correct the conditions necessitating its appointment.

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1           **D. Compensation of Receiver**

2           42. The Receiver is permitted to charge up to \$385.00 per hour for services rendered  
3 by it. This rate may be increased upon the Receiver’s application to the Court, with notice to the  
4 Division and the Owners.

5           43. The Receiver may pay the Receiver's own fees and expenses by either: (a) serving  
6 on the Division and the Owners a notice of intent to pay to which no objection is received by the  
7 Receiver within 20 calendar days of the notice; or (b) filing with the Court and serving on the  
8 Division and the Owners a request for interim payment, which the Court then approves.

9           44. The Receiver shall be entitled to reimbursement of all expenses incurred directly  
10 benefiting the receivership estate. The Receiver shall not be reimbursed for the Receiver's general  
11 office administration expenses or overhead, such as office supplies, office rent, or other expenses  
12 not exclusively related to the receivership.

13           **E. Discharge of the Receiver**

14           45. The receivership shall remain in place no longer than the conditions that justify it  
15 make necessary. The Court will discharge the Receiver as soon as it is satisfied, in consultation  
16 with the Receiver, that if the Receiver is discharged, the System will be operated by an individual  
17 or entity with the technical, managerial, and financial capacity necessary to ensure that the  
18 System is, and will remain, in compliance with the Act. The Court expects that, as the  
19 receivership progresses, the Receiver will facilitate the transition of the System's control to the  
20 individual or entity that will operate the System after the Receiver is discharged.

21           46. Discharge of the Receiver shall require a Court order upon noticed motion for  
22 approval of the Receiver's final report and account. To initiate this discharge, the Receiver shall  
23 file, serve, and obtain a hearing date on a motion for discharge and approval of the final report  
24 and account. The motion to approve the final report and account and for discharge of the Receiver  
25 shall contain the following: (a) a declaration or declarations stating what was done during the  
26 receivership, certifying the accuracy of the final accounting, stating the basis for the termination  
27 of the receivership (such as sale of the System to a new owner or its consolidation with another  
28 system), and stating the basis for an order for the distribution of any receivership assets; and (b) a

1 summary of the receivership accounting which shall include the total revenues received, the total  
2 expenditures identified and enumerated by major categories, the net amount of any surplus or  
3 deficit, and evidence of any necessary supporting facts.

4 To ensure the orderly operation of the receivership and maximize the value of the System,  
5 **IT IS HEREBY FURTHER ORDERED** that while the receivership is pending, and until the  
6 further order of the Court, the COURT ORDERS the Owners and their employees, agents, and  
7 representatives, including Damian Moore, to do the following:

8 47. Make all reasonable efforts to cooperate with the Receiver, not obstruct the  
9 Receiver in the performance of his duties, and ensure that the Receiver can access, possess, and  
10 control all System property, including all property controlled by the Owners that is in any manner  
11 used in the System's operations or the delivery of water or related services to the System's  
12 customers.

13 48. Immediately turn over possession of the System's property to the Receiver,  
14 including any prepaid fees or surcharges and other System funds, whether such funds have been  
15 deposited into the System's accounts.

16 49. Immediately turn over to the Receiver all documents, books, accounts, bank  
17 accounts, deposit accounts, records, deeds, casements, tax information, papers, payroll and  
18 employee related information, current and past customer lists and contacts, access codes, keys,  
19 passwords, access to social media and other websites for the System, and any other documents  
20 and data, whether in electronic or hardcopy form, and wherever located, that pertain to the  
21 System. To the extent that these items are not in their possession or control, the Owners must  
22 immediately notify the Receiver of their existence and make reasonable efforts to obtain them and  
23 turn them over to the Receiver. The Owners must cooperate with the Receiver to ensure any  
24 unrecorded easements or deeds are promptly recorded, and to execute all documents that are  
25 necessary for the Receiver to carry out the authorities and duties set forth in this order.

26 50. Immediately advise the Receiver in writing about the nature and extent of  
27 insurance coverage of the System's property and name the Receiver as an additional insured on  
28 each insurance policy. The Owners may not cancel, reduce, or modify any insurance coverage,

1 and must notify the insurance company that the Receiver has exclusive authority to make changes  
2 to the existing insurance coverage until the conclusion of the receivership.

3 51. Immediately advise the Receiver in writing about the nature and extent of any  
4 ongoing and past negotiations pertaining to the potential sale, reorganization, or consolidation of  
5 the System.

6 52. Immediately advise the Receiver in writing about the nature and extent of any  
7 ongoing and past System failures, shutdowns, glitches, shortfalls, and malfunctions.

8 53. Immediately advise the Receiver in writing about the nature and extent of any  
9 suspected potential future System failures, shutdowns, glitches, shortfalls, or malfunctions.

10 54. Refrain from the following acts: (a) committing, encouraging, or allowing any  
11 waste, or any act on the System in violation of the law or this Court's order; (b) removing,  
12 transferring, encumbering, disposing, or concealing any fixtures of the System; (c) demanding,  
13 collecting, or concealing any customer bill payments, surcharges, fees, or any other charges or  
14 revenue in connection with the System's provision of water services, whether such services were  
15 provided before or after the date of this Order; (d) interfering in any manner with the Receiver's  
16 duties or obligations under this order; or (e) committing any act that would diminish or impair the  
17 preservation of the System or the Receiver's possessory right to the System and its components  
18 and rights.

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1 To promote judicial efficiency and ensure the orderly operation of the receivership, **IT IS**  
2 **HEREBY FURTHER ORDERED** that all persons who receive actual or constructive notice of  
3 this Order are ordered to do the following: (a) obtain this Court’s approval to prosecute any new  
4 judicial proceedings that involves the Receiver or the System; (b) refrain from interfering with  
5 any property in the control of Receiver or that is subject to this Order; and (c) turn over to the  
6 Receiver any System asset within five (5) business days of receipt of a copy of this Order.

7 **IT IS SO ORDERED.**

8  
9 Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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