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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**
11

12 Coordination Proceeding) Judicial Council Coordination
Special Title (Rule 1550(b))) Proceeding No. 4408
13)
14 **ANTELOPE VALLEY**) Santa Clara Case No. 1-05-CV-049053
GROUNDWATER CASES) Assigned to the Honorable Jack Komar
Department 17C
15 Including Consolidated Actions:)
16 **Los Angeles County Waterworks District**) **SCI CALIFORNIA FUNERAL SERVICES,**
No. 40 v. Diamond Farming Co.) **INC., A CALIFORNIA CORPORATION**
17 Superior Court of California, County of Los) **DBA JOSHUA MEMORIAL PARK'S**
Angeles, Case No. BC 325 201) **REPLY TO OPPOSITION TO MOTION TO**
18) **INTERVENE IN JUDGMENT**
Los Angeles County Waterworks District)
19 **No. 40 v. Diamond Farming Co.**) Date: November 14, 2019
Superior Court of California, County of) Time: 9:00 a.m.
20 Kern, Case No. S-1500-CV-254-348) Judge: Hon. Jack Komar, Judge
21 **Wm. Bolthouse Farms, Inc. v. City of**) **[Hearing to be conducted by Courtcall]**
Lancaster)
22 **Diamond Farming Co. v. City of**)
Lancaster)
23 **Diamond Farming Co. v. Palmdale**)
Water Dist.)
24 Superior Court of California, County of)
Riverside, consolidated actions, Case Nos.)
25 RIC 353 840, RIC 344 436, RIC 344 668)
26 **AND RELATED ACTIONS.**)
27 _____)

1 **I. INTRODUCTION**

2 The process by which SCI California Funeral Services, Inc., dba Joshua Memorial Park
3 (“Joshua Memorial”) seeks to intervene in the Judgment as a Section 5.1.10 Non-Stipulating Party
4 began months, not weeks ago, when Joshua Memorial submitted the same extensive information,
5 documentation, and supporting analysis to the Watermaster and the Advisory Committee that is
6 now presented in the Motion. None of the parties opposing the Motion (“Opposing Landowners”)
7 lodged objections at the July 2019 Watermaster hearing for Joshua Memorial’s Production
8 Application.

9 Joshua Memorial has not wavered in recognizing that the quantity of its Section 5.1.10
10 Production Right would ultimately be determined by the Court. Joshua Memorial filed its Motion
11 in accordance Sections 5.1.10, 6.5, and 20.9 of the Judgment and has presented evidence of its land
12 ownership, groundwater production system, estimated quantity and reasonable and beneficial use
13 of groundwater for cemetery irrigation, its non-Party status under the Judgment and other relevant
14 information. The evidence in many ways exceeds that which was deemed sufficient for other
15 Parties that have been recognized under Section 5.1.10. Notwithstanding those facts, the
16 Opposition seeks to impose an even more exacting standard and process upon Joshua Memorial
17 than is required by the Judgment and was required of any other Section 5.1.10 entity.

18 The Court should grant the Motion in its entirety. Alternatively, if the Court requires
19 further proceedings, it should at a minimum enter an order establishing Joshua Memorial as a
20 Non-Stipulating Party with a Production Right under Section 5.1.10., and limit the scope of
21 subsequent proceedings to establishing the quantity of that Production Right. Such proceedings
22 should maximize the use of negotiations among appropriate interested parties. A full blown
23 discovery and trial process suggested by the Opposing Landowners is neither necessary nor
24 appropriate in light of: (1) the extensive and transparent Watermaster process completed by Joshua
25 Memorial, (2) the supporting evidence already presented through the Motion, and (3) the process
26 of negotiation and presentation of evidence by stipulations and declarations that was utilized for
27 other Section 5.1.10 entities. Joshua Memorial is willing to engage in discussions and negotiations
28 to address appropriate, narrowly defined contested issues.

1 **II. ARGUMENT**

2 **a. SCI Properly Has Followed if Not Exceeded the Judgment’s Requirements in**
3 **Seeking to Intervene as a Section 5.1.10. Non-Stipulating Party.**

4 The Opposition suggests that the Opposing Landowners had just fourteen days to consider
5 Joshua Memorial’s Section 5.1.10. Production Right claim. (Opposition., 6:15-22.) In fact, the
6 Opposing Landowners (and all other Parties) had several months and several open, public
7 Watermaster Board and Advisory Committee meetings to engage with Joshua Memorial and to
8 address the issues raised in the Opposition.

9 Joshua Memorial was notably transparent in the Watermaster process. The Watermaster
10 has not adopted any specific Rules and Regulations implementing Judgment Section 5.1.10., and
11 Joshua Memorial is the first post-Judgment entity to seek to intervene under that provision. Those
12 circumstances notwithstanding, Joshua Memorial made available to the Watermaster and the
13 Advisory Committee the same detailed information and analysis presented in the Motion. This
14 included the Production Application and detailed supporting materials of June 12, 2019
15 (Declaration of Derek Hoffman in Support of Motion to Intervene (“Hoffman Decl.”),
16 ¶ 4; Exhibit 1) and subsequent information and documentation responsive to Advisory Committee
17 comments, on July 11, 2019. (Hoffman Decl., ¶ 5; Exhibit 2.) The Watermaster heard and
18 considered Joshua Memorial’s Production Application at a public hearing on July 24, 2019.
19 (Hoffman Decl., ¶ 6; Exhibit 3; Hoffman Decl., ¶ 7; Exhibit 4.). None of the Opposing
20 Landowners (or any other Party) objected to SCI’s Production Application at the July 24, 2019,
21 Watermaster hearing.

22 Joshua Memorial proceeded to file the Motion, which is the procedure required under
23 Section 20.9 for all non-Party Persons seeking to intervene in the Judgment. Nothing in Section
24 5.1.10 precludes the Court from “taking evidence” by way of declarations submitted in support of
25 a motion to intervene, or precludes any Stipulating Party from asserting a “procedural or legal
26 objection” through that process.

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1 **b. Joshua Memorial Has Clearly Established Its Status as a Non-Party Under the**
2 **Judgment, Which Necessitates the Motion to Intervene.**

3 The Opposition raises a number of hypothetical theories as to why Joshua Memorial was
4 never named and served or otherwise properly joined or made subject to the Judgment as a Party.
5 (Opp. 10-11.) The Opposition asserts that Joshua Memorial’s “absence from lists of Parties in the
6 Judgment ... does not mean [it] lacked notice of the Adjudication.” (Opp. 10:11-12.) While the
7 Opposition would dismiss the importance of the “lists of Parties in the Judgment,” it is those very
8 lists from which the determination of Joshua Memorial’s non-Party status must be made. The
9 Court has placed determinative weight on those lists in ruling on prior motions to intervene.¹

10 As summarized in the Motion, a “Party” is defined under Judgment Section 3.5.27 as: “Any
11 Person(s) that has (have) been named and served or otherwise properly joined, or has (have)
12 become subject to this Judgment and any prior judgments of this Court in this Action and all their
13 respective heirs, successors-in-interest and assigns...” Joshua Memorial Park is not a successor or
14 assignee to a Party. Joshua Memorial Park is also not a “Defaulting Party.” The Judgment
15 expressly states that: “A **list** of Defaulting Parties is attached as Exhibit 1 [to the Judgment]”
16 (Section 3.5.11, emphasis added), and that “**All** Parties against which a default judgment has been
17 entered are identified on Exhibit 1, attached hereto and **incorporated herein by reference.**”
18 (Section 1.6, emphasis added.)

19 Joshua Memorial does not appear on any of the Judgment’s lists of Parties. The Motion
20 supplied evidence of Joshua Memorial’s decades-long property ownership and its unchanged
21 corporate status and publicly available information filed with the Secretary of State for a 20-year
22 duration that spanned the entire Adjudication process.

23 There is also no provision in the Judgment that prohibits a non-Party from obtaining a
24 recognized Production Right under Section 5.1.10. if they are geographically located within the
25 boundaries of a Public Water Supplier.

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27 ¹ The Court ruled, for example, that Long Valley Road, L.P.’s status as a listed Small Pumper Class Member
28 controls its status under the Judgment, despite Long Valley’s claims that it produced significantly greater
amounts of groundwater and that it was incorrectly named a member of that class.

1 **c. Joshua Memorial Has Presented Comparable and in Some Cases More**
2 **Supporting Evidence than Other Section 5.1.10 Entities.**

3 The Opposition correctly notes that the resolution of claims made by other Section 5.1.10
4 entities prior to entry of the Judgment was achieved through a negotiation process. (Opp. 10:5) As
5 recognized in the Statement of Decision, those entities established Section 5.1.10 Production
6 Rights by way of trial stipulations and written declarations. (December 23, 2015 Statement of
7 Decision, 12:1-21.) Joshua Memorial has produced comparable and in some cases more
8 supporting evidence for its Section 5.1.10 Production Right claim than other Section 5.1.10
9 entities.

10 Many aspects of the water right claims of certain Section 5.1.10 entities were supported
11 exclusively by written testimony, including, for example, testimony on information and belief as to
12 the dates wells were drilled, testimony describing the water systems and property, and the manner
13 in which water use was estimated (which varied due to the lack of flow meters or dedicated
14 electrical meters in most cases). Very few, if any of those entities, retained a professional engineer
15 as Joshua Memorial has done, to offer supporting analysis of their claimed water right.

16 Joshua Memorial does not seek in any way to question or diminish the validity of those
17 established Section 5.1.10 Production Rights, but rather to demonstrate that Joshua Memorial has
18 produced significant, reliable and comparable testimony and evidence to support its claim. The
19 Court has previously recognized many different methods of determining water use. Joshua
20 Memorial has produced evidence and testimony with respect to its: its land ownership,
21 groundwater production system, estimated quantity and reasonable and beneficial use of
22 groundwater for cemetery irrigation, its non-Party status under the Judgment and other relevant
23 information.

24 The Opposition asserts that “before [Joshua Memorial] may establish a Production Right, it
25 must first establish self-help, i.e., that it pumped groundwater during the prescriptive periods.”
26 (Opp. 7:8-10.) It describes, without specificity, the “prescriptive claims” of Public Water
27 Suppliers “possibly occurring as early as 1951.” Such an analysis is not required in order to
28 establish a Section 5.1.10 Production Right. The Statement of Decision states that the “Public

1 Water Suppliers sought an award of prescriptive rights against the Tapia parties, defaulted parties,
2 and parties who did not appear at trial ... the Court finds that those Public Water Suppliers have
3 established the requisite elements for their respective prescriptive right claims **against these**
4 **parties.**” (4:9-12, emphasis added.) “The Court finds that the long-term, severe water shortage in
5 the Basin was sufficient to satisfy the element of notice to the **Tapia parties, defaulted parties,**
6 **and parties who did not appear at trial.**” (6:5-7; 7:6-8, 10-11, emphasis added.) “Defaulted
7 parties and parties who did not appear at trial failed to meet their burden to produce evidence of
8 ownership, reasonable and beneficial use, and self-help. They are ... subject to the prescriptive
9 rights of the Public Water Suppliers.” Joshua Memorial is not a Defaulted Party or a Party who
10 did not appear at trial (or a Tapia party).

11 The entities that were afforded rights under Section 5.1.10. were not required to establish
12 “self-help”. Rather, the Statement of Decision recognized that each entity had “proven [1] its
13 respective land ownership or other appropriate interest in the Basin, and [2] its reasonable and
14 beneficial use, and [3] established its overlying right.” Unlike Exhibit 3 or 4 Production Rights, a
15 Section 5.1.10. Production Right is a uniquely defined and somewhat limited right under the
16 Judgment. Joshua Memorial should not be held to a more exacting standard than that required of
17 the existing Section 5.1.10 entities.

18 **d. Including Joshua Memorial’s Production in the Amount of 122 AFY in the**
19 **Non-Stipulating Parties Pool Will Not Cause Material Injury to the Basin.**

20 If the Opposition’s interpretation of Section 5.1.10 were correct, then no application for a
21 Section 5.1.10 Production Right would be permitted. The Opposition incorrectly asserts that all
22 Production by Non-Stipulating Parties, even within the 7% threshold, causes Material Injury.² That
23 interpretation is not consistent with the language of Section 5.1.10., which states in relevant part:

24 “If the total Production by Non-Stipulating Parties is **less** than seven percent (7%)
25 of the Native Safe Yield, such Production will be addressed when Native Safe
26 Yield is reviewed pursuant to Paragraph 18.5.9. If the total Production by Non-

27 ² Opposition footnote 5 states in relevant part: “Production within the seven percent amount would involve
28 overdraft, which would fall under the definition of Material Injury provided in Paragraph 3.5.18.1, and no
Material Injury analysis is performed *presumably* because that amount of Material Injury is accepted until
Native Safe Yield Production Rights are re-determined.” (Emphasis added.)

1 Stipulating Parties is **greater** than seven percent (7%) of the Native Safe Yield,
2 the Watermaster shall determine **whether** Production by Non-Stipulating Parties
3 **would cause** Material Injury, **in which case** the Watermaster shall take action to
4 mitigate the Material Injury, including, but not limited to, imposing a Balance
5 Assessment, ...” (Emphasis added.)

6 A Watermaster evaluation of whether total production by all Non-Stipulating Parties causes
7 Material Injury does not arise unless total production exceeds 7% of the Native Safe Yield.
8 Including Joshua Memorial Park at 122 AFY within the pool will bring the total Section 5.1.10
9 Production to less than one percent of the Native Safe Yield – still far below the 7% threshold
10 established in the Judgment.

11 **e. Joshua Memorial Seeks Equity, Not to Evade It.**

12 Contrary to the allegation in the Opposition, Joshua Memorial does not seek “a shielded
13 right superior to that of other Producers” (Opp. 5:7). As indicated in Joshua Memorial’s July 11,
14 2019 letter responsive to the Advisory Committee:

15 “Joshua Memorial Park recognizes that many Stipulating Parties agreed to
16 significant reductions in pumping under the Judgment. Some Stipulating Parties,
17 for example, are required to ramp down by approximately 50% or more. By
18 contrast, many Stipulating Parties, particularly Exhibit 4 Parties, are not required
19 to ramp down production, including many that have Production Rights in amounts
20 that are similar to or much greater than the Production Right sought by Joshua
21 Memorial Park under Section 5.1.10. In other words, it is difficult to define a
22 ‘reduction similar to those imposed on existing Production Rights’ because those
23 reductions were negotiated and vary; but, the Stipulating Parties with Production
24 Rights in amounts most comparable to the amount sought by Joshua Memorial
25 Park are in many instances not required to ramp down.”

26 (Hoffman Decl., Exhibit 2, p. 5.)

27 Examples of Exhibit 4 Parties with Pre-Rampdown Production in amounts closest
28 to the 91-147 AFY range of Production estimated for Joshua Memorial include:

Exhibit 4 Party	Pre-Rampdown Production	Production Right
AV Solar Ranch 1, LLC	96.00	96.00
eSolar Inc.; Red Dawn Suntower LLC	150.00	150.00
Granite Construction Company (Big Rock Facility)	126.00	126.00
Lilia Mabel Selak, TTEE Barbara Aznarez Deed Trust and Selak, Mabel Trust	150.00	150.00

1 None of these Parties are subject to Rampdown. Likewise, a number of Exhibit 4 Parties
2 with Pre-Rampdown Production in amounts approximately two to fifteen times *greater* than Joshua
3 Memorial are not subject to Rampdown (or are subject to relatively little Rampdown):

Exhibit 4 Party	Pre-Rampdown Production	Production Right
Burrows/300 A40 H LLC	295.00	295.00
Copa De Oro Land Company	325.00	325.00
Tierra Bonita Ranch	505.00	430.00
Rosamond Ranch, LP	598.00	598.00
Del Sur Ranch LLC	600.00	600.00
Gorrindo Resourceful LLC	629.00	629.00
Jane Healy and Healy Enterprises Inc.	700.00	700.00
Richard Miner	1089.40	999.00
Antelope Valley Water Storage LLC	1772.00	1772.00

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11 As further indicated in Joshua Memorial’s Watermaster Production Application
12 materials:

13 “Joshua Memorial Park seeks a Production Right under Section 5.1.10 in the
14 amount of 122 AFY, **recognizing that the ultimate amount of Joshua
15 Memorial Park’s Production Right will be determined and approved by the
16 Court in accordance with the procedure set forth in Section 5.1.10.** Should
17 the Court, after taking evidence, rule that Joshua Memorial Park has a Production
18 Right under Section 5.1.10., **Joshua Memorial Park will ‘be subject to all
19 provisions of this Judgment, including reduction in Production necessary to
20 implement the Physical Solution and the requirements to pay assessments.’**
As described in Joshua Memorial Park’s Production Application, a reduction in its
production may not be deemed necessary to implement the Physical Solution, in
part because total Non-Stipulating Party production is currently nowhere near the
7% threshold.”

(Hoffman Decl., Exhibit 2, p. 5.)

21 The Opposition correctly notes that Section 5.1.10 does not provide any standard
22 for reduction. (Opp., 6:1-3.) Reductions “necessary to implement the Physical Solution”
23 should be equitable, and should also consider that the Physical Solution approved by the
24 Court already accounts for total Non-Stipulating Party Production in an amount up to the
25 7% threshold. Joshua Memorial seeks equity, not to evade it as alleged in the Opposition.
26 (Opp. 5:5-7.)

1 **III. CONCLUSION**

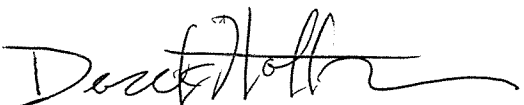
2 The Court may—and should—grant Joshua Memorial’s Motion to Intervene as a
3 Non-Stipulating Party, and enter an order establishing a Production Right for Joshua
4 Memorial in the amount of 122 AFY in accordance with Judgment Section 5.1.10.

5 Alternatively, if the Court requires further proceedings, it should at a minimum
6 enter an order establishing Joshua Memorial as a Non-Stipulating Party with a Production
7 Right under Section 5.1.10., and limit the scope of subsequent proceedings to establishing
8 the quantity of that Production Right. The Opposing Landowners “do not oppose SCI’s
9 intervention as a Party to the Judgment,” (Opp., 3:21-22) and the Watermaster has
10 already stipulated to Joshua Memorial intervening as a Non-Stipulating Party.
11 (Watermaster Joinder to Opp., 2:1-2.) Any further proceedings should maximize the use
12 of negotiations among the appropriate interested parties, as was done for the other
13 Section 5.1.10 entities. Appropriate interested parties would include counsel for those
14 parties that filed the Opposition and joinders thereto, namely the Opposing Landowners,
15 the Watermaster, and Palmdale Water District. Parties that: (1) did not contest Joshua
16 Memorial’s extensive Production Application at the Watermaster; or (2) did not oppose
17 or join in opposition to this Motion, should be deemed to have waived objections to
18 Joshua Memorial’s claimed Production Right.

19 DATED: October 31, 2019

Respectfully submitted,

20 GRESHAM SAVAGE NOLAN & TILDEN, PC

21
22 By: 
23 MICHAEL DUANE DAVIS, ESQ.
24 DEREK R. HOFFMAN, ESQ.
25 Attorneys for SCI CALIFORNIA FUNERAL
26 SERVICES, INC., a California Corporation dba
27 JOSHUA MEMORIAL PARK

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Re: *ANTELOPE VALLEY GROUNDWATER CASES*
Los Angeles County Superior Court Judicial Council Coordinated
Proceedings No. 4408; Santa Clara County Superior Court Case No. 1-05-CV-049053


I am employed in the County of San Bernardino, State of California. I am over the age of 18 years and not a party to the within action; my business address is: 550 East Hospitality Lane, Suite 300, San Bernardino, CA 92408-4205.

On October 31, 2019, I served the foregoing document(s) described **SCI SCI CALIFORNIA FUNERAL SERVICES, INC., A CALIFORNIA CORPORATION DBA JOSHUA MEMORIAL PARK'S REPLY TO OPPOSITION TO MOTION TO INTERVENE IN JUDGMENT** on the interested parties in this action in the following manner:

(X) **BY ELECTRONIC SERVICE** – I caused such document(s) listed above to be electronically served, via One Legal, to all parties appearing on the Santa Clara County Superior Court website, <http://www.scefilng.org>, in the action of the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is dina.snider@greshamsavage.com,

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

Executed on October 31, 2019 at San Bernardino, California.


DINA M. SNIDER