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7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 * * *

11 COORDINATION PROCEEDING) Judicial Council Coordination
SPECIAL TITLE (Rule 1550(b))) Proceeding No. 4408
12)
13 ANTELOPE VALLEY GROUNDWATER) CASE NO. 1-05-CV-409053
CASES)
14 INCLUDED ACTIONS:)
15 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40 v. DIAMOND)
16 FARMING COMPANY, et al.,) JOINT CASE MANAGEMENT
Los Angeles Superior Court) CONFERENCE STATEMENT
17 Case No. BC325201)
18 LOS ANGELES COUNTY WATERWORKS)
DISTRICT NO. 40 v. DIAMOND)
19 FARMING COMPANY, et al.,) DATE: November 25, 2008
Kern County Superior Court) TIME: 10:30 a.m.
20 Case No. S-1500-CV-254348) DEPT: 17
21 DIAMOND FARMING COMPANY, and)
W.M. BOLTHOUSE FARMS, INC., v.)
22 CITY OF LANCASTER, et al.,)
Riverside Superior Court)
23 Case No. RIC 344436 [c/w case)
no. RIC 344668 and 353840])
24)
25)
26)

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 The following parties, BOLTHOUSE PROPERTIES, LLC and WM.
3 BOLTHOUSE FARMS, INC., by and through their attorneys of record,
4 Clifford & Brown, by Richard G. Zimmer; DIAMOND FARMING COMPANY
5 and CRYSTAL ORGANIC FARMS, LLC, by and through their attorneys fo
6 record, LeBeau Thelen, LLP, by Bob Joyce; ANTELOPE VALLEY
7 GROUNDWATER AGREEMENT ASSOCIATION ("AGWA"), by and through its
8 attorneys of record, Brownstein, Hyatt, Farber & Schreck, LLP, by
9 Michael Fife; SERVICE ROCK PRODUCTS CORPORATION and SHEEP CREEK
10 WATER COMPANY, INC., by and through their attorneys of record,
11 Gresham, Savage, Nolan & Tilden, by Michael Davis; RICHARD A.
12 WOOD (Small Pumpers), by and through their attorneys of record,
13 Law Offices of Michael D. McLachlan, APC, and the Law Office of
14 Daniel M. O'Leary, by Michael McLachlan; and A.V. UNITED MUTUAL
15 GROUP and WHITE FENCE FARMS MUTUAL WATER COMPANY, INC., by and
16 through their attorneys of record, Covington & Crowe, LLP, by
17 Robert Dougherty, file this Joint Case Management Conference
18 Statement, as a way of streamlining the proceedings in hopes that
19 speaking with one voice will assist the Court in evaluating and
20 making further Case Management Orders.

21 **AT ISSUE MATTERS**

22 It is critical that "at issue" matters be resolved before
23 the Phase 3 Trial. The following are some issues which the
24 landowners contend need to be resolved.

25 **McCarran Act/Necessary Parties**

26 It is critical that the case be properly at issue to assure

1 jurisdiction over the parties and to assure due process of law.
2 Jurisdiction over the United States can only be obtained where
3 there has been a waiver of sovereign immunity pursuant to the
4 McCarran Amendment, 42 U.S.C. § 666. For a waiver of sovereign
5 immunity, the McCarran Amendment requires that the action is one
6 of "general adjudication" of the rights to groundwater within the
7 area of adjudication.

8 The United States has not asserted that this court lacks
9 jurisdiction over the United States. Likewise, the United States
10 has not required that all parties appear at the Phase I or Phase
11 II trials. Nevertheless, given the fact that this complex and
12 expensive litigation action could later be reversed on appeal for
13 failure to properly assure jurisdiction over the United States,
14 this case cannot proceed with the substantive issues to be
15 determined in future phases without a court determination that
16 the proceeding is comprehensive for purposes of a waiver of
17 sovereign immunity pursuant to the McCarran Amendment.

18 Waivers of sovereign immunity are to be strictly construed.
19 Moreover, sovereign immunity cannot be waived through actions of
20 federal officers. See *City of Chino v. Superior Court* (1967) 255
21 Cal.App.2d 747, 756-57. Thus, agreement of the United States to
22 participate in future phases of this proceeding is not a
23 sufficient guarantee that the proceeding is a comprehensive
24 adjudication within the meaning of the McCarran Amendment.
25 Therefore, as a basis of jurisdiction of this court over the
26 United States, before any further trial phase commences, the

1 landowners demand a court finding that the action, including the
2 current parties and class definitions, is a comprehensive
3 adjudication for purposes of the McCarran Amendment.

4 Once the court makes the foregoing determination, the United
5 States may either submit to the jurisdiction of the court,
6 waiving any alleged objection under the McCarran Amendment, or
7 may challenge jurisdiction under the McCarran Amendment. Either
8 way, the issue will be resolved, and the matter properly placed
9 at issue, before any further trial phase is set.

10 **Service of Process**

11 For approximately two years, the Court and parties have been
12 wrestling with the issues of necessary parties and service of
13 process. It is critical that all necessary parties are before
14 the Court in order to litigate substantive issues and to comply
15 with the demands of the Federal Government related to the
16 McCarran Act.

17 Information provided to date by the water purveyors has been
18 minimally enlightening, appears to be incomplete and does not
19 appear to be organized in such a way that the Court and/or the
20 parties can meaningfully evaluate who has been served and who has
21 not. The landowners request that a map be developed by the
22 purveyors showing all property within the Antelope Valley with
23 identification of whether service of process has occurred on all
24 currently unrepresented parties and non-class members, as to each
25 parcel on said map.

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1 **In Rem v. In Personam Action**

2 The Landowners request clarification by the Court that this
3 matter will proceed as an *In Rem* action against property.
4 Following recordation requirements for property will ensure that
5 any judgment resulting from the adjudication will run with the
6 land and be binding upon all subsequent purchasers of the land.
7 Attempting to assure notice of obligations running with the land
8 on an *In Personam* basis is unworkable and ultimately will result
9 in confusion regarding property water rights.

10 **Notice**

11 The form of notice to class representatives should be
12 finalized, followed by prompt notice to landowners in order that
13 they may opt in or out of the classes.

14 **Pleadings**

15 It is essential that the operative pleadings are identified
16 and that all parties have filed Answers to Complaints and/or
17 Answers to Cross-Complaints. As the Court recently articulated,
18 the pleadings must define the scope of the proceeding, including
19 the claims of the various parties in order to determine which
20 party has the burden of proof on particular issues. The
21 Landowners request the Court create a procedure to document
22 operative pleadings.

23 **Conclusion**

24 The Court must clarify the operative pleadings, confirm all
25 necessary property is before the Court *in rem* and confirm service
26 of process and/or notice on all necessary parties. Until the

1 matter is properly at issue, setting a trial date would be
2 procedurally improper. The Landowners request a Case Management
3 Conference be set in May 2009 to confirm the matter is at issue
4 and to set a trial date.

5 **JURY TRIAL**

6 California law is clear that parties are entitled to a jury
7 trial to resolve disputes regarding the existence of prescriptive
8 rights. *Cal Judges Benchbook: Civil Proceedings Before Trial* §
9 2.77, citing *Arciero Ranches v. Meza* (1993) 17 Cal.App.4th 114,
10 123-36. "[I]f either the existence of the [common law property]
11 right or the fact of its violation be disputed, [the parties]
12 must establish that right at law; or, in other words by a jury,
13 if one be demanded." *Id.*, at 124 (internal quotations and
14 citations omitted). Because the issues of yield and overdraft
15 are aspects of the prescription claim, those issues must be tried
16 as part of that claim before the same jury. "The right to a jury
17 trial on the claims of prescription, is a fundamental
18 constitutional right under the California State Constitution."
19 See *Arciero, supra*.

20 The Landowner parties previously have requested jury trial
21 on all issues to which they are entitled to a jury trial. These
22 include, but are not limited to, all causes of action alleged in
23 the pleadings including all elements of such causes of action
24 including claims of prescription. For example, the purveyor
25 parties claim they have perfected prescriptive rights claims
26 against landowners by pumping in an overdrafted basin.

1 Accordingly, in addition to all other necessary elements,
2 overdraft is an element of the claims of prescription as alleged
3 by the water purveyors. The landowners request jury trial on all
4 of these elements.

5 **PHASE 3 TRIAL**

6 The landowners request that the Phase 3 Trial cover all
7 causes of action set forth in the pleadings by the parties, with
8 the exception of causes of action requesting a potential physical
9 solution, management and other equitable issues. The remaining
10 issues should be litigated in a final Phase 4 trial.

11 Trial must consist of trial on causes of action. Trial on
12 amorphous concepts such as safe yield, overdraft, etc., lacking
13 context and connection to a pleaded cause of action, are
14 problematic. Trial on causes of action will have many beneficial
15 consequences, including clarification of the party with the
16 burden of proof, notice to all parties regarding the issues to be
17 tried, opportunity for discovery on such issues, judicial
18 clarification of disputed legal issues and controlling law,
19 opportunity for expert analysis and disposal of causes of action
20 by judgment in order to provide a basis for potential physical
21 solution, management and equitable issues.

22 The Court and counsel worked hard to make the Phase 2 trial
23 run smoothly and to have meaning within the context of the
24 pleadings. However, the Phase 2 Trial is exemplary of why causes
25 of action should be tried rather than trying vague non-
26 dispositive hydrologic issues, and why multiple issues should be

1 | tried at the same time. In retrospect, it is clear that none of
2 | the parties had the same view of what was being tried in Phase 2.
3 | Given the fact that different parties had different ideas of what
4 | was to be tried in Phase 2, experts were prepared on different
5 | issues within a very short time frame, with rebuttal and sur-
6 | rebuttal issues outstanding when the Court excluded further
7 | evidence on the grounds of Evidence Code section 352.

8 | Notwithstanding the fact that there was insufficient time to
9 | conduct any meaningful discovery, the scope of discovery was
10 | unclear because the issues were unclear. Numerous discussions
11 | regarding the burden of proof and the burden of production of
12 | evidence occurred throughout the trial because dispositive causes
13 | of action were not being litigated. At various times, before and
14 | throughout the trial, it was somewhat unclear what was being
15 | tried, whether it was basins, sub-basins, hydraulic connection or
16 | otherwise. Even the experts did not agree regarding definitions
17 | or precisely what was being tried since legal issues became
18 | entangled with hydrologic issues. Attorneys suspected other
19 | attorneys of gamesmanship, innocently arising as a result of
20 | different conceptions of what was being tried. No causes of
21 | action were disposed of as a result of the Phase 2 trial.

22 | Finally, the Phase 2 Trial was extremely expensive and time
23 | consuming to the parties. It became clear during the course of
24 | trial that various issues involving expert testimony could
25 | potentially have a bearing on causes of action not being tried,
26 | resulting in further consumption of resources which could have

1 been better spent in a trial where such issues would be evaluated
2 in the context of the causes of action alleged.

3 The landowners suggest the following approach leading up to
4 the Phase 3 Trial:

- 5 1. Confirm service of process and/or notice on all
6 necessary parties and class members;
- 7 2. Assure proper identification of all operative pleadings
8 and appearances by parties accordingly;
- 9 3. Identify with specificity all causes of action asserted
10 by all parties;
- 11 4. Assure proper in rem identification of all parcels
12 subject to the litigation;
- 13 5. Confirm before the matter is found to be at issue,
14 notice and/or service on all necessary parties and
15 require United States agreement and/or challenge
16 jurisdiction for McCarran purposes;
- 17 6. Assure sufficient time for discovery on all causes of
18 action alleged by all parties;
- 19 7. Assure sufficient time for expert analysis by all
20 parties on all causes of action;
- 21 8. Assure sufficient time for expert depositions; and
- 22 9. Jury trial on all causes of action, with the exception
23 of potential physical solution, management and
24 equitable issues.

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1 MEET AND CONFER CONFERENCE WITH ALL PARTIES WHO HAVE OUTSTANDING
2 DISCOVERY

3 As noted above, notwithstanding the fact that the Court did
4 not limit discovery to any particular phase, most of the purveyor
5 parties have objected to discovery which the purveyors claimed
6 was beyond the scope of the Phase 2 Trial. Conducting multi
7 phase discovery in this way will unduly complicate and make
8 discovery more expensive. The parties will have multiple and
9 continuing disputes over what is at issue and what is not at
10 issue, along with required meet and confer conferences with the
11 Court. Allowing trial on pleaded causes of action as set forth
12 above will streamline the discovery process, allowing the Court
13 to make rulings as necessary along the way, so that the parties
14 are clear what causes of action are being tried and clear as to
15 the evidence upon which such causes of action are based.

16 The landowners request the Court set a joint meet and confer
17 conference with all parties who have outstanding discovery served
18 and who believe they have not received sufficient responses.

19 CONCLUSION

20 This matter must be at issue before the Phase 3 Trial is
21 set. Notice and service of process must be timely completed
22 before any further trial phase. The Phase 3 trial should
23 litigate all causes of action in the pleadings with the exception
24 of causes of action requesting a potential physical solution,
25 management and other equitable issues. The Phase 3 trial should
26 be scheduled a sufficient time in the future to allow all


1 parties, new and old, sufficient time to conduct discovery,
2 engage in necessary law and motion, obtain expert consultation,
3 analysis and conclusions, conduct expert depositions and prepare
4 for trial. The Phase 4 trial should litigate all remaining
5 issues.

6 The parties should be ordered to meet and confer
7 collectively regarding all outstanding discovery disputes
8 followed by a meet and confer conference with the court regarding
9 remaining contested issues. Further discovery should not be
10 limited by any alleged phase relevancy.

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DATED: November 21st, 2008

Respectfully submitted,
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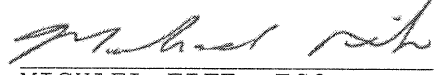
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PROOF OF SERVICE (C.C.P. §1013a, 2015.5)

Antelope Valley Groundwater Cases
Judicial Counsel Coordination Proceeding No. 4408
Santa Clara County Superior Court Case No. 1-05-CV-049053

I am employed in the County of Kern, State of California. I am over the age of 18 and not a party to the within action; my business address is 1430 Truxtun Avenue, Bakersfield, CA 93301.

On November 21, 2008, I served the foregoing document(s) entitled:

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

— by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

— by placing _ the original, _ a true copy thereof, enclosed in a sealed enveloped addressed as follows:

X BY SANTA CLARA SUPERIOR COURT E-FILING IN COMPLEX LITIGATION PURSUANT TO CLARIFICATION ORDER DATED OCTOBER 27, 2005.

Executed on November 21, 2008, at Bakersfield, California.

X (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 that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.


NANETTE MAXEY
2455-2