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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**ANTELOPE VALLEY
GROUNDWATER CASES**
19 Included Actions:
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
Angeles, Case No. BC 325201;
22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
No. S-1500-CV-254-348;
24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
26 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
27 RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408
CLASS ACTION
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS' TRIAL
SETTING CONFERENCE STATEMENT**
Date: July 9, 2012
Time: 9:00 a.m.
Dept.: 1

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1 **I. INTRODUCTION**

2 The Antelope Valley Groundwater Basin ("Basin") is in overdraft and it requires a
3 physical solution. Without a physical solution, the Basin will continue to lose groundwater in
4 storage causing land subsidence and other harm to the public.¹ A primary component of the
5 physical solution is balancing the Basin's supply and demand through increasing use of imported
6 water and a court-ordered reduction in groundwater use to a level that does not exceed the safe
7 yield. Each party's reduced groundwater use will depend upon the extent the party can establish
8 historical reasonable and beneficial groundwater use, as well as the party's use, if any, of
9 supplemental or imported water supplies augmenting the Basin's recharge from natural sources.
10 Only then will the court be able to determine how much of the Basin's native yield can be used by
11 a party in the physical solution and the allocation of the supplemental yield from imported water
12 sources.

13 In summary, determining historical pumping for reasonable and beneficial use is the
14 foundation for the determination of the parties' respective water rights, a necessary component of
15 the physical solution. Accordingly, the next trial phase should be the determination of the parties'
16 respective water rights beginning with a determination of each party's reasonable and beneficial
17 use of groundwater.

18 There is an additional reason why the next trial phase should be a determination of the
19 parties' groundwater rights. As the court is aware, these coordinated and consolidated
20 proceedings must be a comprehensive adjudication of groundwater rights under the McCarren
21 Amendment. Unless the court determines the parties' groundwater rights, there cannot be a
22 comprehensive adjudication under the McCarren Amendment.

23 Finally, an early trial date for determining the parties' water rights will encourage the
24 parties to resolve their disagreements including the allocation of the Basin's limited supply of
25 groundwater.

26
27 _____
28 ¹ Recent public statements by the United States Geological Survey are that there will be
additional land subsidence and loss of groundwater in storage unless the overdraft is stopped
immediately.

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2 **II. A PHYSICAL SOLUTION MUST BE BASED ON THE PARTIES' COURT-**
3 **DETERMINED WATER RIGHTS**

4 "A physical solution is an equitable remedy designed to alleviate overdrafts and the
5 consequential depletion of water resources in a particular area consistent with the constitutional
6 mandate to prevent waste and unreasonable water use and to maximize the beneficial use of this
7 state's limited resource." (*Cal. American Water v. City of Seaside* (2010) 183 Cal.App.4th 471,
8 480.) The physical solution, however, cannot completely disregard the legal priorities arising
9 from the parties' respective historical groundwater uses - a mistake made in the physical solution
10 adopted by the trial court in the Mojave Basin. (*City of Barstow v. Mojave Water Agency* (2000)
11 23 Cal.4th 1224, 1247). As the *Mojave* court wrote: "Under such circumstances the 1928
12 constitutional amendment [making all water rights subject to the California Constitution
13 requirement of reasonable and beneficial use] . . . compels the trial court, before issuing a decree .
14 . . to ascertain whether there exists a physical solution of the problem presented that will avoid the
15 waste, and that will at the same time not unreasonably and adversely affect the prior
16 appropriator's vested property right." (23 Cal.4th at p. 1250 citing *City of Lodi v. East Bay*
17 *Municipal Utility District* (1936) 7 Cal 2d 316, 341).

18 The *Mojave* decision is consistent with a long line of California Supreme Court decisions
19 concerning physical solutions. (E.g., *City of Lodi v. East Bay Municipal Utility District, supra*, 7
20 Cal 2d 316.) For example, in *Peabody v. Vallejo* (1935) 2 Cal.2d 351, the court held that a
21 physical solution must protect the "substantial enjoyment" of prior rights. As explained below,
22 the court first determines the parties' respective reasonable and beneficial groundwater uses as the
23 starting point for determining the parties' water rights. Only when that process is complete can
24 the court evaluate a proposed physical solution.

25 **III. EACH PARTY MUST FIRST PROVE ITS CURRENT REASONABLE AND**
26 **BENEFICIAL USE OF WATER**

27 The starting point for a physical solution is the determination of the parties' water rights.
28 And the starting point for determining the parties' rights to the natural yield is to first determine
the parties' present reasonable and beneficial groundwater use. This methodology has been

1 clearly articulated by the California Supreme Court in *Tulare Irrigation District v. Lindsay-*
2 *Strathmore Irrigation District* (1935) 3 Cal. 2d 489. First, the trial court determines the
3 groundwater production for each party. The amount of groundwater use alone is insufficient.
4 This is because the reasonable and beneficial use of water, as mandated in Article X, Section 2 of
5 the California Constitution, is the cardinal principle of California water law. (*United States v.*
6 *State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 105.) Stated simply, not only
7 must the court determine the amount of groundwater use, but that the amount used was for a
8 reasonable and beneficial purpose under the facts and circumstances unique to each case.

9 The California Supreme Court stated that, initially, the burden is upon all landowners to
10 first prove their respective reasonable and beneficial uses of water: "[P]lacing the burden on the
11 appropriator who seeks to take water from a particular water field to show that there is a surplus
12 does not relieve the ...[existing users] ...from the burden of proving the quantity of water that they
13 have been using, and that such amount is necessary for their reasonable and beneficial
14 purposes...[the] burden [on the appropriator] did not come into existence until after the...riparian's
15 first proved the amount required by them for reasonable beneficial purposes." (*Tulare Irrigation*
16 *District v. Lindsay-Strathmore Irrigation District* (1935) 3 Cal.2d 489, 535.)²

17 **IV. IF THERE IS NO SURPLUS NATIVE RECHARGE, EACH PARTY MUST**
18 **PROVE ITS HISTORICAL REASONABLE AND BENEFICIAL USE OF WATER**
19 **DURING THE OVERDRAFT PERIOD**

20 By all accounts groundwater use has exceeded the safe yield since at least 1945. During
21 the more than 50 years of overdraft conditions, many of the parties have established their
22 groundwater rights by pumping groundwater for a reasonable and beneficial use. For example,
23 the Public Water Suppliers have used groundwater for more than 50 years to meet the public's
24 need for a safe and reliable supply of water.

25 Here, each party will be required to establish its history of groundwater use during the
26 overdraft period. For some parties, they will have water meter records showing actual
27 groundwater use. Other parties will have records of crops grown which can be used to estimate

28 ² Although riparian rights were involved in *Tulare, supra*, riparian rights are analogous to
overlying rights. (*City of Barstow, supra*, 23 Cal.4th 1224 at p. 1240.)

1 the crop water requirement. Other parties will have electrical records for their groundwater
2 pumps. In any event, the court can work with the parties to establish both a streamlined process
3 and an orderly schedule for the parties' efficient presentation of groundwater use evidence during
4 the next phase of trial.

5 It is difficult to know for certain but it is believed that many parties' groundwater use
6 evidence will not be contested. Some parties, however, are expected to contest the groundwater
7 claims by other users. It is suggested that the court work with the parties to identify what
8 groundwater use claims are contested, and by whom, in order to determine how to best schedule
9 the presentation of groundwater use evidence. In the event there is no dispute over a party's
10 groundwater use, it is further suggested that the court consider the use of stipulations, declarations
11 or another simplified process for the effective introduction of uncontested groundwater evidence.

12 **V. THE COURT DETERMINES THE PARTIES' RESPECTIVE GROUNDWATER**
13 **RIGHTS AFTER THE PARTIES ESTABLISH THEIR REASONABLE AND**
14 **BENEFICIAL USES**

15 The court will have to resolve the disputes among parties that cannot reach an agreement
16 on how to allocate the Basin water. There are disputes as to the rights of the parties to the Basin's
17 groundwater. Some parties contest the rights of the Government for its use of groundwater.
18 Other parties contest the rights of the Public Water Suppliers to continue to use groundwater to
19 meet the public's water needs. There are many disputes between the private landowners as to
20 their respective use of water including both the amount of water claimed and whether it was a
21 reasonable and beneficial use of water.

22 There has been an indication that, somehow, the presentation of evidence concerning the
23 Public Water Suppliers' prescriptive rights established in the long overdraft period would consist
24 entirely of an examination of each landowner party's groundwater levels during the overdraft
25 period. That is not true. For there to be a prescriptive right, parties must have had notice of
26 overdraft. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 282.) Here, there
27 is ample evidence of basin-wide notice of both overdraft and Public Water Supplier continuous
28 use of groundwater during decades of overdraft. Most, if not all, of the evidence cannot be
reasonably controverted or disputed and will take only a relatively short amount of time for its

1 introduction and admission. Evidence of local conditions is not relevant to this determination.

2 Additionally, most of the parties and most of the groundwater use is and has been
3 concentrated in a few areas of the Basin. Their chronic declines in groundwater levels have
4 already been presented to the court during the previous phase of trial and it would be wasteful to
5 repeat the evidence in the next phase of trial. It is suggested that the court work with the parties
6 to identify what additional evidence of groundwater levels would be needed in the next phase of
7 trial to avoid unduly repetitive or time consuming testimony.

8 **VI. THE COURT DETERMINES THE RIGHTS TO THE SUPPLEMENTAL YIELD**
9 **FROM IMPORTED WATER**

10 The court heard exhaustive evidence from both public water suppliers and landowners on
11 the amount of basin recharge from supplemental water sources, i.e., the importation of water from
12 the State Water Project that augments the Basin's natural yield. Most, if not all, of the evidence
13 on the amount of the supplemental yield was not in dispute. It would be both improper and
14 wasteful for the court to have the evidence repeated in the next phase of trial. The Public Water
15 Suppliers respectfully request the court enter findings on the rights to the supplemental yield
16 based on the substantial evidence presented in the previous phase of trial.

17 **VII. CONCLUSION**

18 The next phase of this action must be tried as soon as possible this year. The Antelope
19 Valley Groundwater Basin continues to be harmed by overdraft and it is critical that this court
20 implement a physical solution as soon as possible. The starting point for a physical solution is
21 determination of the parties' respective water rights. Thus, the next phase must focus on all
22 parties' water production from the Basin beginning with evidence of each party's groundwater
23 use for a reasonable and beneficial purpose.

24 The following is a general plan for the determination of the various water rights claims:

25 Each party presents evidence of its current reasonable and beneficial groundwater use.

26 The court can require the parties to identify their evidence well in advance of the next trial phase
27 so that all parties can evaluate whether to contest any other party's evidence. Additionally, the
28 court can work with the parties to establish an efficient and orderly manner and schedule for the

1 presentation of evidence.

2 After hearing evidence of each party's groundwater use, the court will determines the
3 amount of water used for reasonable and beneficial use by each party. "*What is a beneficial use*
4 *depends upon the facts and circumstances of each case, and what would be a reasonable*
5 *beneficial use, where water is present in excess of all needs, may not be a reasonable beneficial*
6 *use in an area of scarcity and great need, and likewise what is a beneficial use at one time may*
7 *be, because of changed conditions, become a waste of water at a later time. (Tulare Irrigation*
8 *Dist., supra, 3 Cal 2d at p. 567 [emphasis added].)*

9 To determine the parties' respective groundwater rights, the court will hear evidence of
10 the parties' respective native yield water rights claims including evidence of historical
11 groundwater use by the United States, Public Water Suppliers and the private landowner parties.
12 The court can work with the parties on the effective introduction of evidence. It is anticipated
13 that the parties will provide legal memoranda or trial briefs to the court to facilitate its decisions.

14 In addition to the court's determination of the parties' rights to the native yield, the court
15 will determine rights to the supplemental yield from imported water. A significant amount of
16 evidence concerning the supplemental yield was admitted in the previous trial phase. The court
17 can work with the parties to identify evidence already admitted to avoid unduly time consuming
18 and repetitive evidence.

19 Dated: July 6, 2012

BEST BEST & KRIEGER LLP

By 

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California, 92614. On July 6, 2012, I served the within document(s):

PUBLIC WATER SUPPLIERS' TRIAL SETTING CONFERENCE STATEMENT

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on July 6, 2012, at Irvine, California.


Kerry V. Keefe