Issued April 27, 2018
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES

Included Consolidated Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of Riverside, consolidated actions, Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40
Superior Court of California, County of Los Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County Waterworks District No. 40
Superior Court of California, County of Los Angeles, Case No. BC 391 869

Judicial Council Coordination Proceeding No. 4408

Lead Case No. BC 325 201

ORDER AFTER HEARINGS ON APRIL 18, 2018

Motion by PPHCSD Requesting Declaratory Relief Regarding Watermaster's Resolution R-18-04, Finding PPHCSD's is Obligated to Pay Replacement Water Assessment Notwithstanding First Sentence of Judgment Section 8.3.

Judge: Honorable Jack Komar, Ret.

The above-entitled matters came on regularly for hearing on April 18, 2018 at 9:00 a.m. in the Superior Court of California, County of Los Angeles, Room 222, the Honorable Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having read and considered the supporting and opposing papers, and having heard and considered the arguments of counsel, and good cause appearing therefore, makes the following order:

The subject of this coordinated matter is an adjudication of conflicting claims for water in a drought impacted, severely overdrawn aquifer in the Antelope Valley. The adjudication as a coordinated case commenced in 2005 and was completed by entry of judgment in December 2015.

The court adjudicated the respective water rights of the residents, property owners, municipalities, public service districts, industries, farmers, and public and private water producers, and approved and adopted a remedy (physical solution) to relieve the continuing shortage of water within the basin.

A Judgment was signed by the court on December 23, 2015, based upon the court's findings of fact and a stipulation among most but not all of the parties to the litigation. As an integral part of the judgment, the court adopted a physical solution which most of the parties stipulated to or supported and which the court independently adopted, thereby making it binding on all the parties to the adjudication.

The judgment and physical solution established which parties have water rights in the adjudication area, quantifying such rights where possible, and established a process to eliminate the overdraft by which all parties having a right to pump water from the aquifer (water producers) are required to reduce their pumping from the native yield over a period of time and to pay a replacement water assessment for any water pumped which exceeds their annual and ultimately their permanent entitlement.

The judgment provides for a seven year period commencing in 2016 within which to bring the aquifer into balance so that annual water production does not exceed the native safe

yield of the aquifer. With a gradual reduction of pumping by all water producers, by the end of the rampdown period, the total amount of pumping is expected to not exceed the annual recharge, and to bring the aquifer into balance. The physical solution and Judgment established the creation of a Watermaster to manage the physical solution.

The motion by Defendant/Cross Complainant Phelan Pinon Hills Community Services District (hereinafter Phelan) seeks a declaration that it is entitled to the benefit of Paragraph 8.3 of the physical solution (all references to paragraphs are to the numbered paragraphs in the physical solution) which provides that "during the first two years of the Rampdown Period, no producer will be subject to a replacement water assessment. The motion is opposed by the Watermaster and the Public Water Producers.

Phelan occupies a unique position as a party to this litigation. Phelan is a public entity, a community service district, and is charged with, among other things, a duty to provide water to its customers. It owns a single well in the Antelope Valley Adjudication area from which it obtains some of the water used to service its customers. None of its customers reside in the subject adjudication area. As is explained below, Phelan has neither appropriative nor prescriptive rights to pump or produce ground water in the adjudication area.

Notwithstanding that it has no correlative water right, in view of the public good and the public interest, the court deemed it equitable to permit Phelan the right to continue to pump water and export it for use of its customers with quantity limits so long as it paid for the water based upon its replacement cost and so long it was not causing damage to the aquifer. The amount of water that Phelan can pump is capped at 1200 acre feet per year based on its historical usage. See Paragraph 6.4.1.2.The essence of Phelan's theory is that because it pumps water from the aquifer it is a producer, and that Paragraph 8.3 is unqualified in its description of "producer." The Watermaster and the public water producers have opposed Phelan's interpretation of the Paragraph 8.3.

While Phelan points to the express language of Paragraph 8.3, as the beginning and end of the inquiry, it is necessary to look at the entirety of Paragraph 8 and all of its subparts (as well as the entirety of the physical solution, including the entire rampdown process) to

evaluate Phelan's position. While the first sentence in Paragraph 8.3 does specifically eliminate the replacement water assessment during the first two years of the rampdown period, and in a vacuum might appear to support Phelan's argument, the second sentence makes clear to whom the relief applies: "During years three through seven of the rampdown period, the amount that each party may produce from the native safe yield will be progressively reduced as necessary, in equal annual increments, from its Pre-rampdown production to its Production right. . . any amount produced over the required production shall be subject to the replacement water assessment." See Paragraph 9.2.

Parties with a prescriptive or other appropriative or "legacy" right[1] to produce water from the native yield are described in Paragraph 5.1 et sq., and includes the small pumper class, overlying producers, non-overlying producers (public water suppliers with prescriptive rights) as well as the federal and state government entities. While Paragraph 3.5.30 defines a producer as a party who produces groundwater, "produce" is defined as pumping that is for reasonable and beneficial uses. Paragraph 3.5.29.

The issue requires interpretation of the judgment and the court approved physical solution. All parties contend that the stipulation and judgment is clear on its face although they arrive at different conclusions. No party has offered parol or extrinsic evidence to interpret the stipulation or the judgment. However, in ascertaining the intent of the judgment and the language used in its interpretation, it is necessary to consider the court's statements of decisions, the evidence upon which the court based the approval of the physical solution, and the entirety of the physical solution and the judgment.

The physical solution "requires quantifying the Producers' rights within the basin which will reasonably allocate the Native Safe Yield..." Paragraph 7. Phelan was found to not have any correlative or other rights to native yield. It acquired no prescriptive right,[2] made no reasonable and beneficial use of any water on property from which it pumped water within the adjudication area, and exported all water pumped from its single well out of the

[1] Parties who protected their correlative rights by pumping water in the face of prescriptive claims.
[2] Phelan produced no evidence to support a prescriptive right and voluntarily dismissed a claim for prescription.

adjudication area for use of its customers in the Mojave Adjudication Area. See Partial Statement of Decision of February 3, 2015. The aquifer was, and has long been, in severe overdraft at the time that Phelan first commenced pumping from its well in 2005 in the adjudication area r and it could not establish an appropriative right. There was no surplus of ground water. Phelan's only right to pump is under the provisions of Paragraph 6.4.1.2. See also Paragraph 3(f) of the Judgment itself.

As a party not having a right to a correlative share of the water in the aquifer, Phelan also has no obligations or other burdens or role in the rampdown process or the rampdown period. Consequently, because Phelan has no rampdown obligations, the provisions relieving a producer of the obligation to pay a water replacement assessment for pumping over its reduced pumping rights has no relevance or impact on Phelan. Only parties subject to the rampdown are required to reduce the amount of water pumped over the rampdown period at their own cost and to pay a replacement water assessment only if they pump more than their reduced right.

The Replacement Water Assessment as specified in Paragraph 9.2 is designed to ensure that as the various producers water rights are reduced, water used above the reduced right will result in an assessment to permit the Watermaster to replace that excess water with imported water. Phelan has no water rights, is not obligated to engage in pumping reduction, and is permitted to produce and pay for up to 1200-acre feet a year. The rampdown provisions do not apply to Phelan which has no right to produce water from the aquifer without paying for replacement water. It also has no rampdown obligations. If it uses water, it must pay for it.

Phelan is neither a stipulating nor a supporting party to the judgment. Paragraph 5.1.10 specifically provides that non-stipulating parties are subject to the judgment's terms but if such party has any water rights as determined by the court, it is subject to reduction in production to implement the physical solution, and the requirement to pay assessments, but shall not be entitled to benefits provided by the stipulation. Here, the court found that Phelan was an

appropriator without any water rights, but accorded it a right to pump but that it must, in effect, pay for all water pumped out of the adjudication area so that the water taken can be replaced by imported water. Phelan's water pumping right is not based on a correlative right to water in the aquifer.

Paragraph 6.4.1.2 in effect permits Phelan to pay for water to replace all water it pumps out of the adjudication area so long as it nets out the water pumped by water to be replaced. But that does not make Phelan a water producer of right from the native safe yield. The specific language of 6.4.2.1 permits Phelan to pump "up to 1200 acre feet a year" so long as it causes no material Injury to the native safe yield and so long as it pays a water replacement assessment so that the water it removes can be returned by purchased water acquired by the Watermaster . Because Phelan has no right to pump water from the native yield without paying for the same, it is not a water producer as defined in Paragraphs 5.1 et seq.

The parties seeking approval of the proposed physical solution and judgment offered evidence to justify and support the proposal. The physical solution was dependent on that evidence . The rights granted to Phelan were only to be a purchaser of water so that its use could not impact the status of the aquifer. No expert opinion quantified Phelan's water use as either a plus or a minus- it was intended to have no net impact. If, as it requests, it is not required to pay for water pumped during 2016 and 1017, its pumping would contribute to the overdraft by pumping water to which it has no right.

The expert opinions were based on the provisions of the stipulation and court's various trial phase statements of decision, subject to the specifics in the proposed judgment and the stipulation. The testimony provided justification for the efficacy of the physical solution, showing how the rampdown process would be able to bring the basin into balance within 7 years. The entirety of the statements of decision and the findings of the court upon which the experts opinions were based included findings that Phelan had no water rights (and because all water pumped by it would be replaced by water purchased by water replacement assessments, Phelan's water use was not subject to the rampdown provisions). Phelan received no burdens

(other than the water assessment) and would receive no benefits from the stipulation since it had no reduction obligations and was neither a stipulating nor a supporting party to the physical solution or the judgment.

CONCLUSION

The court concludes that Phelan is not entitled to the provisions of Paragraph 8.3. The specification that "during the first two years of the Rampdown Period no *producer* shall be subject to a Replacement Water Assessment . . ." (emphasis added) is not unqualified. It limits the definition of "producers" to parties having a right to pump from the native yield but who also have a duty to reduce pumping.

SO ORDERED.

Dated: April 26, 2018

Hon. Jack Komar (Ret.)
Judge of the Superior Court