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

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER
CASES

Included Actions:

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC
325201

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
Superior Court of California, County of
Kern, Case No. S-1500-CV 254348

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 353840, RIC 344436, RIC
344668

Judicial Council Coordination Proceeding
No. 4408

SC Case No. 105CV 049053
Assigned to the Honorable Jack Komar

VAN DAM PARTIES AND ANTELOPE
VALLEY WATER STORAGE LLC
JOINT CASE MANAGEMENT
CONFERENCE STATEMENT

Further Case Management Conference

Date: March 8, 2010
Time: 10:00 a.m.
Dept: 1

Cross-Defendants GERTRUDE VAN DAM, DELBERT VAN DAM, GARY VAN

1 DAM, and CRAIG VAN DAM (“VAN DAM PARTIES”) and ANTELOPE VALLEY WATER
2 STORAGE LLC (“AVWS”) file this Case Management Conference Statement as requested by
3 the Court in its February 19, 2010 Order Resetting Case Management Conference.

4 Background

5 During the February 2, 2010 Case Management Conference the Court properly
6 acknowledged and agreed that prior to this case proceeding to a further trial phase the case must
7 first be at issue. More specifically, it is well recognized by the Court and all the parties that it is
8 a legal and practical imperative that all parties that have a water rights claim to groundwater
9 existing the Antelope Valley Groundwater Basin (Basin) must be joined in this action in order
10 for any judgment to bind all the parties. However, because the Plaintiffs and Cross-Complaints
11 have been unable to indentify, serve and secure the appearance of all the parties that presently
12 have a water rights claim to groundwater existing in the Basin it is both legally improper and
13 imprudent to set this matter for trial at this time.

14 The Court’s analysis in the recent Order Transferring And Consolidating Actions For All
15 Purposes provides important background and guidance on this point, stating:

16 “The Complaints and Cross-Complaints all include, in one form or other, declaratory
17 relief causes of action seeking determinations of the right to draw ground water from the
18 Antelope Valley basin. . . in a single aquifer, all rights are said to be correlative¹ to all
19 other water rights in the aquifer. A determination of an individual party’s water rights
20 (whether by action to quiet title or one for declaratory relief) cannot be decided in the
21 abstract but must also take into consideration all other water rights with a single aquifer.
22 All actions pending, therefore, of necessity involve common issues of law and fact
23 relating to the determination of the relative rights to water from the [Basin] . . . and all
24 parties to the litigation claiming water rights are necessary parties to the Court
25 adjudicating a binding determination of those rights.” (Page 2, lines 16-26.) (Emphasis
26 added.)

27 . . .

28 ¹ On several occasions the Court has made similar statements that all water rights in the Basin are “correlative”.
More precisely, only overlying rights of landowners are correlative. (*California Water* (1995) *Littleworth & Garner*,
at p. 50, (citations omitted.) Appropriate rights are limited to the surplus waters of a basin and are junior to the
needs and paramount rights of overlying users. (*Id.*, at pages 51-52, (citations omitted).) Established prescriptive
rights may secure priority over certain of the rights of some overlying right holders. (*Los Angeles v. San Fernando*
(1975) 14 Cal.3d 199, 293-294.) We presume the Court actual intends by such statements, consistent with
California water law, that competing water rights sharing a common source, like the Basin, are all “related”.

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“If the basin is in overdraft (a fact still to be established), the Court in each declaratory relief proceeding would of necessity have to look at the totality of pumping of all parties, evaluate the rights of all parties who are producing water from the aquifer, determine whether injunctive relief was required, and determine what solution equity and statutory law required (including a potential physical solution).” (Page 3, 7-11). (Emphasis added.)

“The McCarran Amendment provides a limited waiver of immunity for joinder in comprehensive adjudications of all rights to a given water source. In order for there to be a comprehensive adjudication all parties who have a water rights claim must be joined in the action and the judgment must bind all the parties.” (Page 3, lines 24-27). (Emphasis added.)

Analysis

The Plaintiffs and Cross-Complainants in this matter have endeavored to identify, serve and obtain jurisdiction over all the parties who have a water rights claim to groundwater existing in the Basin. Unfortunately, they have not as of March 8, 2010, filed sufficient proof with the Court verifying that they have joined all water right claimants thereby securing the necessary jurisdiction of all the necessary parties to this “comprehensive adjudication”. Fundamentally, the Plaintiffs and Cross-Complainants have not joined the ever growing number of landowners in the Antelope Valley which are constantly buying, selling and otherwise transferring lands within the Basin.

As overlying landowners within the jurisdictional boundaries of the Basin such persons (individual, corporate or otherwise) each have either a water rights claim to groundwater based on historic use or have the prospect of a future use of such waters. The overlying right is dependent upon land ownership overlying groundwater. (*California Water*, *supra*, *Littleworth & Garner*, at p. 50.) (Emphasis added.) The Plaintiffs and Cross-complainants have elected to treat the Complaints and Cross-Complaints in this adjudication as invoking only *in personam* and not *in rem* jurisdiction. The consequence of this election is in regard to the *res judicata* effect. (*Estate of La Motta* (1970) 7 Cal.App.3d 960, 967 (citing Rest. of Judgments, §§ 2, 73).) Specifically, the Restatement provides that, “A valid judgment *in rem* cannot be collaterally

1 attacked.” (Rest. of Judgments, §2 (Comment (a)).) “As far as interests in the thing are
2 concerned, the judgment is binding not only on persons who were subject to the jurisdiction of
3 the court which rendered the judgment, but also on persons not personally subject to the
4 jurisdiction of the court.” (Rest. of Judgments, §73 (Comment (a)).) In contrast, a judgment
5 based only on *in personam* jurisdiction binds merely the parties to the action and is subject to
6 collateral attack by all those not directly subject to the Court’s jurisdiction. Importantly, all the
7 new water rights claimants (e.g., all those persons who continue to acquire land in the
8 adjudication area during the pendency of this litigation) have never received either of the two
9 class notifications and have not been served with any of the Complaints or Cross-Complaints.
10 Such claimants have never appeared before this Court and have not filed any responsive pleading
11 subjecting them to the Court’s jurisdiction.

12 Furthermore, absent the joinder of all the currently existing landowners who have a water
13 rights claim, the necessary “comprehensive” McCarran Amendment jurisdiction is lacking.
14 Without the joinder of these claimants the Court will not have all the parties participating, or
15 electing not to participate, in the trial intended to determine the common facts and legal issues
16 central to this adjudication. This is problematic because these unserved water rights claimants
17 are indispensable parties under C.C.P. §389(b), particularly in light of the strict standards of the
18 McCarran Amendment. As acknowledged by the Court in the Order Transferring And
19 Consolidating Actions For All Purposes, by necessity the nature of this comprehensive
20 adjudication is one in which “a judgment in favor of one claimant for part of the property . . .
21 would necessarily determine the amount or extent which remains available to the others.” (*Bank*
22 *of California Nat. Ass'n v. Superior Court in and for City and County of San Francisco*) (1940)
23 16 Cal.2d 516, 521.) That makes “the others,” in this case the unserved water rights claimants,
24 indispensable parties without whom the action cannot proceed. (*Id.*) In sum, because there
25 currently is only a “partial joinder” of indispensable parties the Plaintiffs and Cross-
26 Complainants have failed to satisfy basic tenets of due process and civil procedure.

27 Lastly, from a practical vantage point, all the substantial public and private investment of
28 time and funds to prepare, participate and determine the matters proposed for trial (e.g.,

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overdraft, safe yield, etc.) will be wasted because the trial will have such fundamental procedure defects it will fail to result in an enforceable final judgment. Therefore, unless and until the Plaintiffs and Cross-Complaints can prove to the Court and the existing parties that -- all parties who have a water rights claim have been joined -- no further phase of trial should be set or initiated because such a trial will not result in a binding judgment.

Conclusion

For the foregoing reasons, the Van Dam Parties and AVWS respectfully request that the Court not order a further trial of any issue relevant to this adjudication at this time. Rather, the Court should issue an order directing the Plaintiffs and Cross-Complaints, and each of them, to develop and implement a procedure which ensures, with verification being provided to both the Court and all the parties, that they have joined all parties that have a water rights claim to groundwater existing the Antelope Valley Groundwater Basin (Basin) so that all parties in this comprehensive adjudication are bound by the final judgment.

Dated: March 2, 2010

THE LAW OFFICES OF YOUNG WOOLDRIDGE, LLP

By: 
SCOTT K. KUNEY, Esq., Attorneys for Van-Dam Parties and Antelope Valley Water Storage, LLC

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF KERN

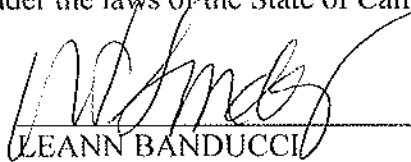
I, LEANN BANDUCCI, declare: I am and was at the times of the service hereunder mentioned, over the age of eighteen (18) years, and not a party to the within cause. My business address is The Law Offices of Young Wooldridge LLP, 1800 30th Street, Fourth Floor, Bakersfield, CA 93301.

On March 2, 2010, I caused the foregoing document(s) entitled as: to be served on the parties via the following service:

X By Posting: I posted the document(s) listed above to the Santa Clara County Superior Court VAN DAM PARTIES AND ANTELOPE VALLEY WATER STORAGE LLC JOINT CASE MANAGEMENT CONFERENCE STATEMENT website in regard to the Antelope Valley Groundwater matter pursuant to the Court's Clarification Order. Electronic service and electronic posting completed through www.sccfiling.org.

Executed on March 2, 2010, at Bakersfield, California.

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


LEANN BANDUCCI