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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

16 ANTELOPE VALLEY GROUNDWATER) Judicial Council Coordination No. 4408
17 CASES)
18 Included Actions:) Santa Clara Case No. 1-05-CV-049053
19) Assigned to The Honorable Jack Komar
20 Los Angeles County Waterworks District No. 40)
21 v. Diamond Farming Co.) **PHASE 2 TRIAL BRIEF OF**
22 Superior Court of California) **TEJON RANCHCORP**
23 County of Los Angeles, Case No. BC 325 201)
24)
25 Los Angeles County Waterworks District No. 40)
26 v. Diamond Farming Co.) Phase 2 Trial Date: October 6, 2008
27 Superior Court of California) Time: 9:00 a.m.
28 County of Kern, Case No. S-1500-CV-254-348) Dept: 1
29)
30 Wm. Bolthouse Farms, Inc. v. City of Lancaster,)
31 Diamond Farming Co. v. Lancaster, Diamond)
32 Farming Co. v. Palmdale Water Dist.)
33 Superior Court of California, County of)
34 Riverside, consolidated actions Case Nos. RIC)
35 353 840, RIC 344 436, RIC 344 668)
36)
37)
38 TEJON RANCHCORP,)
39)
40)
41 Cross-Complainant,)
42)
43 v.)
44)

1)
2 LOS ANGELES COUNTY WATERWORKS)
3 DISTRICT NO. 40; ROSAMOND COMMUNITY)
4 SERVICES DISTRICT; and DOES 1 through 100,)
5)
6 Cross-Defendants.)
7)
8)
9)

10 The cross-defendant and cross-complainant TEJON RANCHCORP (Tejon)
11 presents the following Phase 2 trial brief.

12 I. INTRODUCTION

13 On March 12, 2007 the court entered its Revised Order After Hearing on
14 Jurisdictional Boundaries defining the Antelope Valley Area of Adjudication (AVAA).
15 The Phase 2 trial, scheduled to commence October 6, 2008, will address the
16 characteristics of the AVAA and whether any portion thereof should be treated as a
17 separate basin for groundwater adjudication purposes. Tejon will present
18 substantial evidence establishing that the AVAA consists of at least two separate
19 groundwater basins.

20 Tejon owns about 33,500 acres within the AVAA at the westerly end of the
21 Antelope Valley. A map of the western end of the Antelope Valley showing the
22 relationship of lands owned by Tejon to the adjudication boundary, the several sub-
23 basins, and the several faults is attached as **Exhibit A**. Tejon's predecessor acquired
24 this land and other lands by grant from the governor of the Department of the
25 Californias in 1846. The grant was confirmed by United States patent dated June 21,
26 1875.¹

27 ¹
28 The Treaty of Guadalupe Hidalgo of 1848, which ended the Mexican-
American war, provides in Article VIII, in part, that "the property of every kind,

1 We now turn to a discussion of the relevant pleadings.

2 **II. THE RELEVANT PLEADINGS**

3 LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 (LA 40) filed a
4 complaint for declaratory and injunctive relief and adjudication of water rights on
5 November 29, 2004 and therein alleged that the Antelope Valley Groundwater Basin
6 (Basin) "encompasses about 940 square miles," "is bounded on the south by the San
7 Gabriel Mountains and on the northwest by the Tehachapi Mountains," and "is an
8 alluvial aquifer with reasonably well-defined boundaries in a lateral direction and a
9 definable bottom." (¶¶ 8 and 9.)² LA 40 served Tejon as Doe 165 and Tejon filed its
10 answer to LA 40's complaint in November of 2005. Tejon then cross-complained
11 against LA 40 and ROSAMOND COMMUNITY SERVICES DISTRICT (Rosamond CSD)
12 for, among other things, an order or judgment that separately adjudicates water
13 rights in the Western Basin.
14

15
16 PALMDALE WATER DISTRICT (Palmdale WD) and QUARTZ HILL WATER
17 DISTRICT (Quartz Hill WD) filed their cross-complaint against LA 40, Rosamond CSD,
18 Tejon and others in November of 2005 and therein alleged that the Basin contains
19 about 940 square miles and that "the sub-basins are sufficiently hydrologically
20

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22 now belonging to Mexicans . . . shall be inviolably respected." (See, e.g., *City of*
23 *Los Angeles v. Venice Peninsula Properties* (1988) 205 Cal.App.3d 1522, 1533-1534
[federally patented Mexican land grant not subject to public trust].)

24 ²
25 These allegations contradict the allegations contained in paragraph 6 of the
26 answer of LA 40 and LOS ANGELES WATERWORKS DISTRICT NO. 37 filed July 5, 2000
27 in *Diamond Farming Company v. City of Landcaster*, Riverside County Superior Court
28 Case RIC 344436 (Case RIC 344436) wherein the districts allege that the Landcaster sub-
basin has no hydrologic connection to the Neenach sub-basin. Tejon hereby requests
that the court take judicial notice of such answer and the answer referred to in footnote
3 hereof under Evidence Code section 452(d).

1 connected as to justify treating them as a single source of groundwater for purposes
2 of determining groundwater rights." (¶ 4.)³ In January of 2006 LA 40 and Rosamond
3 CSD filed an additional cross-complaint against Tejon and others which contains in
4 paragraphs 19 and 20 thereof essentially the same allegations contained in
5 paragraphs 8 and 9 of the cross-complaint filed by LA 40 in November of 2004.
6 ANTELOPE VALLEY-EAST KERN WATER AGENCY (AVEK) filed a cross-complaint
7 against Tejon and others in August of 2006 and therein alleged that the Basin has
8 been divided into sub-basins but "the sub-basins are sufficiently hydrologically
9 connected as to justify treating them as a single source of groundwater for purposes
10 of determining groundwater rights." (¶ 5.)
11

12 Finally, in January of 2007 LA 40, Rosamond CSD, CALIFORNIA WATER
13 SERVICE COMPANY, the CITY OF LANCASTER, the CITY OF PALMDALE,
14 LITTLE ROCK CREEK IRRIGATION DISTRICT (Little Rock Creek ID), Palmdale WD,
15 PALM RANCH IRRIGATION DISTRICT (Palm Ranch ID) and Quartz Hill WD
16 apparently filed a first-amended cross-complaint against Tejon and others and
17 therein alleged that the Basin encompasses about 1,000 square miles, is bounded on
18 the south by the San Gabriel Mountains and on the northwest by the Tehachapi
19 Mountains, and that the Basin has been divided into sub-basins but the sub-basins
20 "are sufficiently hydrologically connected to justify treating them as a single source of
21 water for purposes of adjudicating the parties' water rights." (¶¶ 21 and 22.)
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26 These allegations contradict the allegations contained in paragraph 2 of the
27 answer of Palmdale WD and Quartz Hill WD filed December 7, 2000 in Case RIC 344436
28 wherein the districts allege that the Lancaster sub-basin has no hydrologic connection
to the Neenach sub-basin.

1 In sum, Tejon is currently a cross-defendant in two cross-complaints, the cross-
2 complaint of AVEK filed in August of 2006 and the first amended cross-complaint of
3 LA 40 and others (the so-called Public Water Purveyors) filed in January of 2007, both
4 of which allege that there is only one Basin for the purposes of adjudicating rights to
5 the use of groundwater.

6 We next discuss several procedural issues.

7 III. PROCEDURAL ISSUES

8 A. Expert Witnesses.

9 Certain parties have designated the following expert witnesses:

- 10 1. Tejon: E. John List, PhD., and Dick Rhone.
- 11 2. Public Water Purveyors: Joe Scalmanini, Kenneth Utley, and Dennis
12 Williams.
- 13 3. City of Los Angeles: Timothy Durbin.
- 14 4. United States: June Oberdorfer and Jason C. Sun.
- 15 5. Anaverde, LLC: John, M. Lambie
- 16 6. Sheep Creek: Ram Auroa, PhD..
- 17 7. Bolthouse Farms: Tom Sheahan

18 B. Motions in Limine.

19 Tejon has filed three motions in limine for orders: (1) excluding the testimony
20 of Joseph Scalmanini, Kenneth Utley, and Dennis Williams, (2) excluding the
21 testimony of Tom Sheahan, and (3) excluding the testimony of Jason Sun. Rather
22 than engage in a meaningful exchange of technical information, the Public Water
23 Purveyors, the United States, and Bolthouse Farms have violated the Case
24 Management Order (CMO) and refused to disclose the opinions of their respective
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28

1 experts, and such experts, with two exceptions (Durbin and Oberdorfer) produced no
2 reports. Tejon requested that these parties comply with the CMO and the minimum
3 disclosure requirements in Code of Civil Procedure section 2034.260. These parties
4 refused to make a pre-trial disclosure of their experts' opinions, thereby depriving
5 Tejon of the opportunity to submit any such opinion to the scrutiny of review by
6 Tejon's experts.⁴ As a result, Tejon could not and did not take the deposition of any of
7 these experts and requests that any opinion not expressly stated in their expert
8 disclosure declarations be excluded at trial.
9

10 It is well settled that a government lawyer in a civil action has the
11 responsibility to seek justice and to develop a *full and fair record*, and he should not
12 use his position or the economic power of the government to harass parties or to
13 bring about unjust settlements or results. (*Los Angeles v. Decker* (1977) 18 Cal.3d
14 860, 871, citing ABA Code of Prof. Responsibility, canon 7, ethical consideration 7-14.)
15 The government, both federal and local, has abdicated its responsibility to develop a
16 full and fair record by concealing the opinions of its experts and refusing to make a
17 meaningful pre-trial exchange.
18

19
20 Anaverde, LLC filed two motions for orders: (1) excluding non-party witnesses
21 from the court, and (2) excluding all of the City of Palmdale's evidence. Tejon
22 supports motion 1 and takes no position on motion 2.
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25 4

26 Counsel for the United States did provide a supplement 11th hour
27 declaration of Mr. Sun after Mr. Sun had the benefit of attending the depositions
28 of Tejon's experts. However, the supplemental declaration submitted after
Tejon's expert, Dick Rhone, left the country for vacation is too little too late and
did not provide Tejon with sufficient time or opportunity to review the declaration
and depose Mr. Sun.

1 The Public Water Purveyors filed one motion for an order excluding the
2 testimony of their own expert, Joseph Scalmanini, as cumulative.

3 **IV. CHARACTERIZATION OF THE BASIN**

4 **A. A Bedrock Ridge Separates the Western**
5 **Basin from the Lancaster Basin.**

6 The AVAA is enormous, consisting of over 1,300 square miles, and includes the
7 cities of Rosamond, Lancaster, Quartz Hill and Palmdale. Years of heavy pumping in
8 these urban areas has caused major cones of depression and a steady decline in the
9 groundwater levels resulting in land subsidence.

10 The southern portion of the AVAA is divided into two substantially
11 independent major groundwater basins — a West Basin and an East Basin. These
12 basins are physically separated by a partially buried ridge of bedrock (Bedrock Ridge)
13 extending northeast from the Antelope Buttes through Little Buttes to the Willow
14 Springs Fault. This Bedrock Ridge provides a substantial barrier to groundwater flow
15 between the two basins such that (a) groundwater contours over the Bedrock Ridge
16 are relatively flat, i.e., little or no hydraulic gradient, (b) the extraction of groundwater
17 in the East Basin does not significantly impact groundwater levels in the West Basin,
18 and vice-versa, and (c) land subsidence resulting from excessive pumping in the East
19 Basin is not manifest in the West Basin.

20 **V. CONCLUSION**

21 In conclusion, the West Basin is a separate basin and should be adjudicated
22 separately from the East Basin. The conditions of declining water levels, subsidence,
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and over-pumping in the East Basin have no significant impact on the West Basin.

Dated: October 1, 2008

Respectfully submitted,

Kuhs & Parker

By William C. Kuhs
William C. Kuhs, Attorney for Tejon

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PROOF OF SERVICE

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I, Lidia E. Luna, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On October 1, 2008, I caused the foregoing document(s) described as: **PHASE 2 TRIAL BRIEF OF TEJON RANCHCORP** to be served on the parties in this action, as follows::

(X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefilng.org regarding the Antelope Valley Groundwater matter.


() (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:

() (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.

() (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.

(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 under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Lidia E. Luna