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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF LOS ANGELES-CENTRAL DISTRICT

15 ANTELOPE VALLEY GROUNDWATER
16 CASES

Judicial Council Coordination No. 4408

17 Included Actions:

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

18 Los Angeles County Waterworks District No. 40 v.
19 Diamond Farming Co., Superior Court of
20 California, County of Los Angeles, Case No. BC
21 325201;

TRIAL SETTING CONFERENCE
STATEMENT OF TEJON RANCHCORP

22 Los Angeles County Waterworks District No. 40 v.
23 Diamond Farming Co., Superior Court of
24 California, County of Kern, Case No. S-1500-CV-
25 254-348;

26 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
27 Diamond Farming Co. v. Lancaster, Diamond
28 Farming Co. v. Palmdale Water Dist., Superior
Court of California, County of Riverside, Case No.
RIC 353 840, RIC 344 436, RIC 344 668

Date: July 9, 2012
Time: 9:00 A.M.
Dept: Dept. 1 (Room 534 Los Angeles)

TEJON RANCHCORP (Tejon) submits the following Trial Setting Conference Statement:

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I. INTRODUCTION

The issues in these cases have been severed for trial. In Phase 1 the court determined the boundary of the Antelope Valley Area of Adjudication (AVAA). The court determined in Phase 2 that the water bearing formations within the AVAA are hydrologically connected and constitute one aquifer (Aquifer). In Phase 3 the court determined that (1) the Aquifer, as a whole, is currently in a state of overdraft, and (2) the safe yield of the Aquifer is currently 110,000 acre feet per year (AFY). The court now plans to schedule Phase 4 of the trial and has asked each party to comment on (1) the issues to be litigated in Phase 4, (2) the estimated time for the trial thereof, and (3) the proposed date of trial.

There are many issues that need to be resolved and the challenge is to identify issues that can be logically “bundled” and efficiently litigated in Phase 4. For example, the court should avoid, if possible, bundling factual issues to be resolved by the court with factual issues to be resolved by a jury. And, where possible, the court should defer the resolution of issues that may become moot based upon the resolution of other issues.

Under the circumstances, Tejon suggests that the court (1) develop a comprehensive list of issues that remain to be resolved, (2) determine which factual issues are to be resolved by the court and which factual issues are to be resolved by a jury, and (3) bundle issues in Phase 4 which, when resolved, will shed substantial light on the rights of the parties to extract groundwater from the Aquifer.

II. SOME REMAINING ISSUES

There are several classes of claimants in the AVAA, some of whom claim a priority based upon their status or their prior conduct. For example, (1) the United States claims a priority based on a claimed “federal reserved right,” (2) some appropriators claim prescriptive rights based on their prior

1 conduct, and (3) Tejon claims that its right to extract groundwater from its land became vested before
2 California was admitted to the Union in 1850 since its title is traceable to Mexican land grants
3 confirmed by patents issued by the United States under the Act of 1851 (see *City of Los Angeles v.*
4 *Venice Peninsula Properties* (1988) 205 Cal.App.3d 1522). We believe the majority of the claimants
5 have claims based on overlying or appropriative rights. This court, of course, must consider the
6 respective water rights of the claimants in making any allocation of the safe yield among the claimants.
7 (E.g., *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, n. 100; *City of Barstow v.*
8 *Mojave Water Agency* (2000) 23 Cal.4th 1224, 1248.) In general terms, overlying rights supersede
9 appropriative claims except insofar as appropriative claims have ripened into prescriptive rights.
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11 In light of the foregoing, some of the issues that remain to be resolved may be stated as follows:¹
12

13 **A. Water Rights of the United States.**

14 1. Did the federal reservation of any land for Edwards Airforce Base (EAB)
15 effect a reservation of groundwater? (See, e.g., Leshy, *The Federal Role in Managing the*
16 *Nation's Groundwater* (2004) 22 Hastings W-N.W. J Env. L & Policy 1.)
17

18 2. Is the claimed "federal reserve right" subject to and subordinate to the
19 claims of the overlying landowners (see, e.g., *Cappaert v. United States* (1976) 426 U.S.
20 128, 131, n. 1) since such overlying rights were part and parcel of the land and
21 appurtenant thereto (e.g., *California Water Service Co. v. Edward Sidebotham & Son*
22 (1964) 224 Cal.App.2d 715, 725) before the federal reservation?
23

24 3. Is the use of water at EAB an overlying use or an appropriative use which
25 is subject to and subordinate to other overlying uses? (See, e.g., *Tehachapi-Cummings*
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28 ¹ The issues are listed without regard to their relative importance or the sequence in which they should be adjudicated, settled, or otherwise resolved.

1 *County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1000, n. 6 [state's use of
2 groundwater for state prison is overlying use, not appropriation].)

3 4. What are the rights of the United States under state law, if any?

4 **B. Mutual Water Companies.**

5 5. Are the mutual water companies and like entities appropriators or
6 agents for their shareholders in the exercise of overlying rights?
7

8 **C. Prescription.**

9 6. Has any appropriator, such as Los Angeles County Waterworks
10 District 40 (District 40), established any rights by prescription, and, if so, which
11 appropriators, what amounts and when?²
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13 7. If an appropriator has established a prescriptive right, what was the
14 safe yield of the Aquifer during the prescriptive period?

15 8. Is District 40 or any other appropriator estopped to assert any
16 claim of prescription because of its past conduct?
17

18 9. Can a claim of prescription based on California law diminish rights
19 established under Mexican law and recognized by patent issued by the United
20 States under the Act of 1851?
21

22 10. Has any prescriptive right been lost through nonuse?

23 11. How is Part 5 (commencing with section 4999) of Division 2 of the
24 Water Code to be applied, if at all?

25 12. Are the rights and defenses of the overlying landowners to be
26 determined on an ownership basis, a parcel-by-parcel basis, or some other basis?
27

28 ² Tejon demands a jury trial on prescription claims.

1 13. Has any appropriator effected a "take" of any water rights and, if
2 so, which appropriator, whose water rights have been or are being taken, and what
3 is or are the amounts of just compensation and attorney's fees?

4 **D. Domestic Use.**

5 14. Does any overlying landowner have a priority based on a domestic
6 use" (see, e.g., Wat. Code, § 106), at least to the extent such use is a "natural use"
7 as distinguished from an "artificial use" (see, e.g., *Lux v. Haggin* (1886) 69 Cal.
8 255, 406-409)?

9 **E. Waste.**

10 15. To what extent, if any, has water extracted from the Aquifer been
11 wasted within the meaning of article 10, section 2, of the California Constitution
12 and what is the effect of any such waste on the claims of the parties in the
13 AVAA?

14 **F. Return Flows.**

15 16. Who has the right to recapture return flows from the use of
16 imported State Water Project (SWP) water, the SWP contractor, the consumers
17 who put the water to reasonable beneficial use, some other person, or no one
18 because the right has been abandoned?

19 **G. Quantification of Water Rights.**

20 17. Is it appropriate to quantify the rights to extract water from those
21 portions of the Aquifer, such as the West Antelope Valley Basin where there is no
22 indication of overdraft, there are no appropriators, and the extractions therein
23 have no effect on water levels in the balance of the Aquifer? (See, e.g.,
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1 *Tehachapi-Cummings County Water District v. Armstrong* (1975) 49 Cal.App.

2 992, 1000-1002.)

3 **III. ANALYSIS**

4 The task at hand is to adjudicate those issues in Phase 4 which, when resolved, will shed
5 substantial light on the rights of the parties to extract groundwater from the Aquifer. Tejon believes
6 that Issues 5, 12, 13, 14 and 15 should be deferred to a later phase of trial since such issues may
7 become moot upon resolution of other issues. The greatest impediment to settlement has been the
8 exaggerated claims of the United States and the appropriators. Thus, Issues 1 through 4 or Issues 6
9 through 11 and 16, or all of such issues, should be adjudicated in Phase 4. Adjudicating Issues 1
10 through 4 and Issues 6 through 11 and 16 together may create logistical problems because of the
11 division of fact - finding responsibility between the court and a jury and the length of a trial to
12 adjudicate all such issues. A resolution of Issue 17 would reduce the complexity of the settlement
13 discussions since if the court were to find that some portions of the AVAA constituted separate
14 "basins" for adjudication purposes, the landowners within those portions could focus on resolving
15 any intra-basin issues or not be bogged down with issues that pertain to other portions of the
16 Aquifer.
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20 **IV. PHASE 4**

21 Under the circumstances, Tejon believes that in Phase 4 the court should adjudicate either
22 Issues 1 through 4 (Option 1) or Issues 6 through 11, 16, and 17 (Option 2). Option 1 should not require
23 much discovery, the issues are probably all issues to be decided by the court, and the trial thereof could
24 be scheduled this winter. Option 2 will require much discovery and trial preparation and the trial
25 thereof should not be scheduled until mid 2013 to avoid calendar conflicts and the holiday season.
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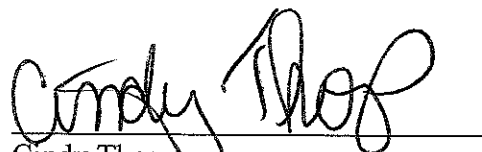
PROOF OF SERVICE

I, Cindy Thorp, 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 July 6, 2012, I caused the foregoing document(s) described as **TRIAL SETTING CONFERENCE STATEMENT 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.scefiling.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, and that the foregoing was executed on July 6, 2012 in Bakersfield, California.
- () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Cindy Thorp

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