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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF LOS ANGELES-CENTRAL DISTRICT

15 ANTELOPE VALLEY GROUNDWATER  
16 CASES

17 Included Actions:

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;

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

Judicial Council Coordination No. 4408

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

TRIAL SETTING CONFERENCE  
STATEMENT OF TEJON RANCHCORP  
AND GRANITE CONSTRUCTION CO.

Date: November 9, 2012  
Time: 9:00 a.m.  
Dept: 1 (Los Angeles)

1 **I. INTRODUCTION**

2 The issues in these cases have been severed for trial. The court has scheduled Phase 4 of the trial  
3 for February 11, 2012 and has asked each party to comment on (1) the issues to be litigated in Phase 4,  
4 and (2) the estimated time for the trial thereof.

5 In Phase 1 the court determined the boundary of the Antelope Valley Area of Adjudication  
6 (AVAA). The court determined in Phase 2 that the water bearing formations within the AVAA are  
7 hydrologically connected and constitute one aquifer (Aquifer), but has not yet determined the “nature  
8 and extent of the hydrologic connectivity of water within various portions of the aquifer.” (Phase 2  
9 Order.) In Phase 3 the court determined that (1) the Aquifer, as a whole, is currently in a state of  
10 overdraft, and (2) the safe yield of the Aquifer is currently an 110,000 acre foot per year (AFY). The  
11 court has not yet determined the historical safe yield or presence of overdraft for the claimed  
12 prescriptive period of 1951 through 2007.

13 There are many issues that need to be resolved and the challenge is to identify issues that can be  
14 logically “bundled” and efficiently litigated in Phase 4. For example, the court should avoid, if possible,  
15 bundling factual issues to be resolved by the court with factual issues to be resolved by a jury.<sup>1</sup> And,  
16 where possible, the court should defer the resolution of issues that may become moot based upon the  
17 resolution of other issues.  
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21 **II. SOME REMAINING ISSUES**

22 There are several classes of claimants in the AVAA, some of whom claim a priority based upon  
23 their status or their prior conduct. For example, (1) the United States claims a priority based on the  
24 “federal reserved right,” (2) some appropriators claim prescriptive rights based on their prior conduct,  
25 and (3) Tejon claims that its right to extract groundwater from its land became vested before California  
26  
27

28 <sup>1</sup> Tejon and Granite demand a jury trial on all issues relating to the PWS’s claims prescription claims.

1 was admitted to the Union in 1850 since its title is traceable to Mexican land grants confirmed by  
2 patents issued by the United States under the Act of 1851 (see *City of Los Angeles v. Venice Peninsula*  
3 *Properties* (1988) 205 Cal.App.3d 1522). We believe the majority of the claimants have claims based on  
4 overlying or appropriative rights. This court, of course, must consider the respective water rights of the  
5 claimants in making any allocation of the safe yield among the claimants. (E.g., *City of Los Angeles v.*  
6 *City of San Fernando* (1975) 14 Cal.3d 199, 293, n. 100; *City of Barstow v. Mojave Water Agency*  
7 (2000) 23 Cal.4<sup>th</sup> 1224, 1248.) In general terms, overlying rights supersede appropriative claims except  
8 insofar as appropriative claims have ripened into prescriptive rights.  
9

10 In light of the foregoing, some of the issues that remain to be resolved may be stated as follows:<sup>2</sup>

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

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

17 2. Does the Desert Land Act of 1877 (19 Stat. 377), which  
18 had the effect of severing non-navigable waters from the public domain  
19 and making such waters subject to disposition under state law (*California*  
20 *Oregon Power Co. v. Beaver Portland Cement Co.* (1935) 295 U.S. 142)  
21 preclude the United States from making any claims to groundwater?  
22

23 3. Is the claimed "federal reserve right" subject to and  
24 subordinate to the claims of the overlying landowners (see, e.g., *Cappaert*  
25 *v. United States* (1976) 426 U.S. 128, 131, n. 1) since such overlying  
26

27  
28 <sup>2</sup> The issues are listed without regard to their relative importance or the sequence in which they should be adjudicated, settled, or otherwise resolved.

1 rights were part and parcel of the land and appurtenant thereto (e.g.,  
2 *California Water Service Co. v. Edward Sidebotham & Son* (1964) 224  
3 Cal.App.2d 715, 725) before the federal reservation?

4 4. Is the use of water at EAB an overlying use or an  
5 appropriative use which is subject to and subordinate to other overlying  
6 uses? (See, e.g., *Tehachapi-Cummings County Water Dist. v. Armstrong*  
7 (1975) 49 Cal.App.3d 992, 1000, n. 6 [state's use of groundwater for state  
8 prison is overlying use, not appropriation].)

9  
10 5. What are the rights of the United States under state law, if  
11 any?

12  
13 6. Does this court have jurisdiction to adjudicate any claims to  
14 compensation against the United States or are all such claims in excess of  
15 \$10,000 within the exclusive jurisdiction of the United States Court of  
16 Federal Claims?

17  
18 **B. Mutual Water Companies.**

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

22 8. Are some of the members of the mutual water companies  
23 also members of a Class or otherwise independently asserting a right to  
24 groundwater?

25  
26 **C. Prescription.**

1           9.     What is the operative five year time period between 1951  
2 and 2007 for analyzing prescriptive claims?

3           10.    Has any appropriator, such as Los Angeles County  
4 Waterworks District 40 (WD40), established any rights by prescription,  
5 and, if so, which appropriators, what amounts and when?  
6

7           11.    If an appropriator has established a prescriptive right, what  
8 was the safe yield of the Aquifer during the prescriptive period?

9           12.    Is WD40 or any other appropriator estopped to assert any  
10 claim of prescription because of its past conduct?  
11

12           13.    Can a claim of prescription based on California law  
13 diminish rights established under Mexican law and recognized by patent  
14 issued by the United States under the Act of 1851?  
15

16           14.    Has any prescriptive right been lost through nonuse?  
17

18           15.    How is Part 5 (commencing with section 4999) of Division  
19 2 of the Water Code to be applied, if at all?  
20

21           16.    Are the rights and defenses of the overlying landowners to  
22 be determined on an ownership basis, a parcel-by-parcel basis, or some  
23 other basis?  
24

25           17.    Can the rights of dormant overlying landowners, such as  
26 the Willis Class, be lost to prescription?  
27

28           18.    Has any appropriator effected a "take" of any water rights  
and, if so, which appropriator, whose water rights have been or are being

1 taken, and what is or are the amounts of just compensation and attorney's  
2 fees?

3 **D. Appropriative Rights.**

4 19. During what period was there surplus water in the Basin?

5 20. Has any party established an appropriative right to surplus  
6 water from the Basin, and if so, when?  
7

8 **E. Domestic Use.**

9 21. Does any overlying landowner have a priority based on a  
10 "domestic use" (see, e.g., Wat. Code, § 106), at least to the extent such use  
11 is a "natural use" as distinguished from an "artificial use" (see, e.g., *Lux v.*  
12 *Haggin* (1886) 69 Cal. 255, 406-409)?  
13

14 22. Does Water Code section 106 express a legislative policy  
15 preference, or change the law regarding correlative groundwater rights?  
16

17 **F. Waste.**

18 23. To what extent, if any, has water extracted from the  
19 Aquifer been wasted within the meaning of article 10, section 2, of the  
20 California Constitution and what is the effect of any such waste on the  
21 claims of the parties in the AVAA?  
22

23 **G. Return Flows.**

24 24. Who has the right to recapture return flows from the  
25 importation and use of imported water, the party responsible for the  
26 importation, the State Water Project contractor who facilitates the  
27  
28

1 importation, the party purchasing the water, the party who put the water to  
2 reasonable beneficial use, or some other person?

3 25. Has any party's right to recapture return flows from  
4 imported water been lost through nonuse or abandonment?

5 **H. Quantification of Water Rights.**

6  
7 26. Is it appropriate to quantify the rights to extract water from  
8 those portions of the Aquifer, such as the West Antelope Valley Basin,  
9 where there is no indication of overdraft, there are no appropriators, and  
10 the extractions therein have no effect on water levels in the balance of the  
11 Aquifer? (See, e.g., *Tehachapi-Cummings County Water District v.*  
12 *Armstrong* (1975) 49 Cal.App. 992, 1000-1002.)

13  
14 **III. ANALYSIS**


15 The task at hand is to adjudicate in Phase 4 those issues which, when resolved, will shed  
16 substantial light on the rights of the parties to extract groundwater from the Aquifer. The greatest  
17 impediment to settlement has been the expanse of the Basin and the exaggerated claims of the United  
18 States and the appropriators. The Basin is simply too large to adjudicate and manage as a single unit.  
19 A resolution of Issue 26 would reduce the complexity of the settlement discussions since if the court  
20 were to find that some portions of the AVAA constituted separate "basins" for adjudication purposes,  
21 the landowners within those portions could focus on resolving any intra-basin issues or not be bogged  
22 down with issues that pertain to other portions of the Aquifer.  
23  
24

25 Some parties have suggested that the court hear evidence of pumping history. In the absence of  
26 a settlement, however, evidence of pumping history does not resolve any cause of action or advance  
27 settlement. The United States has suggested that the next phase should involve claims of prescription  
28

1 and self help. A jury trial on prescription, however, is not practical or possible within the set time  
2 frame. Nor would such a trial add any clarity to the claimed Federal Reserve Right. Under the  
3 circumstances, Tejon and Granite believe that in Phase 4 the court should adjudicate either Issues 1  
4 through 5 (Option 1) or Issues 24 and 25 (Option 2). Option 1 will require some discovery. Option 2  
5 will not require much discovery and could be heard on the date presently set for trial.  
6

7 Dated: November 6, 2012

KUHS & PARKER

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11 Robert G. Kuhs, Attorney for Tejon Ranchcorp  
12 and Granite Construction Co.  
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**PROOF OF SERVICE**

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 November 6, 2012, I caused the foregoing document(s) described as **TRIAL SETTING CONFERENCE STATEMENT OF TEJON RANHCORP AND GRANITE CONSTRUCTION CO.** 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](http://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, and that the foregoing was executed on November 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.

  
\_\_\_\_\_  
Lidia E. Luna