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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES-CENTRAL DISTRICT

15 Coordination Proceeding
16 Special Title (Rule 1550(b))

Judicial Council Coordination No. 4408

17 ANTELOPE VALLEY GROUNDWATER
18 CASES

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar
Department 17C

19 Included Actions:

20 Los Angeles County Waterworks District No. 40
21 v. Diamond Farming Co., Superior Court of
22 California, County of Los Angeles, Case No. BC
23 325201;

**JOINT OPPOSITION OF LANDOWNER
PARTIES TO MOTION OF SCI
CALIFORNIA FUNERAL SERVICES,
INC. TO INTERVENE IN JUDGMENT**

24 Los Angeles County Waterworks District No. 40
25 v. Diamond Farming Co., Superior Court of
26 California, County of Kern, Case No. S-1500-CV-
27 254-348;

Date: November 7, 2019
Time: 9:00 a.m.
Judge: Hon. Jack Komar, Judge

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

AND RELATED ACTIONS.

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I. INTRODUCTION

This opposition to SCI California Funeral Services, Inc.'s ("SCI") "Motion to Intervene in Judgment" ("Motion") is filed on behalf of the several undersigned Landowner Parties¹ who hold Production Rights² included on Exhibit 4 of the Judgment and Physical Solution entered on December 23, 2015 ("Judgment"), collectively referred to as "the Landowner Parties."

SCI seeks, by its Motion to: (1) intervene pursuant to Paragraph 20.9 of the Judgment and (2) be granted a Production Right of 122 acre-feet per year as a Non-Stipulating Party pursuant to Paragraph 5.1.10 of the Judgment. The Motion is supported, *inter alia*, by the Declaration of Jason Coleman, an Engineer with 10 years of "experience in well pump station, water distribution and water treatment design and related construction management." (Coleman Decl., Exhibit 1.) Mr. Coleman reviewed well power consumption records from 2015 to 2017 and the well pump manufacturer's published data. Based on this admittedly "limited data" Mr. Coleman made several assumptions and opined that SCI's "historical annual groundwater production has ranged between approximately 91 AFY to 147 AFY" depending on which assumptions are used. (Coleman Decl., ¶ 5.) Mr. Coleman did not examine any records prior to 2015 and offered no opinion as to SCI's groundwater production prior to 2015.

Since SCI appears to be producing groundwater from the Basin outside of the Judgment, the Landowner Parties do not oppose SCI's intervention as a Party to the Judgment. The Landowner Parties do, however, oppose granting SCI a Production Right based on the limited evidence presented in the Motion. The Court should set a discovery and trial schedule that allows SCI's claimed

¹ Tejon Ranchcorp, Antelope Valley-East Kern Water Agency, County Sanitation Districts 14 and 20 of Los Angeles County, State of California; Santa Monica Mountains Conservancy; 50th District Agricultural Association, Wm. Bolthouse Farms and Bolthouse Properties, LLC

² Capitalized terms not defined herein have the same meaning as defined in the Judgment.

1 Production Right to be vetted in a process consistent with Paragraph 5.1.10, including development of
2 the relevant facts that allows procedural or legal objections to be made, evidence to be discovered,
3 taken and evaluated, and the amount of SCI's Production Right, if any, determined in a fair and
4 equitable manner. The Court's previous implementation of Paragraph 5.1.10, as discussed in Section
5 VII of the December 23, 2015, Statement of Decision, can serve as a model for an appropriate process.
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7 II. CLAIMS BY NON-STIPULATING PARTIES FOR PRODUCTION RIGHTS

8 A. Paragraph 5.1.10 Provides a Process for Evaluating Non-Stipulating Party Claims for 9 Production Rights.

10 SCI seeks to establish a Production Right under Paragraph 5.1.10 of the Judgment, which
11 provides in relevant part:

12 Any claim to a right to Produce Groundwater from the Basin by a Non-
13 Stipulating Party shall be subject to procedural or legal objection by any
14 Stipulating Party. Should the Court, after taking evidence, rule that a Non-
15 Stipulating Party has a Production Right, the Non-Stipulating Party shall be
16 subject to all provisions of this Judgment, including reduction in Production
17 necessary to implement the Physical Solution and the requirements to pay
assessments, but shall not be entitled to benefits provided by Stipulation,
including but not limited to Carry Over pursuant to Paragraph 15 and Transfers
pursuant to Paragraph 16.

18 Under the appropriate circumstances, Paragraph 5.1.10 "provides for the allocation of groundwater to
19 *unknown existing* pumpers that prove their respective entitlement to water rights in the future"
20 (Statement of Decision at 23:24-25, italics in original). However, Paragraph 5.1.10 does not apply to
21 any Party served before the Judgment was entered and whose rights are already determined in the
22 Judgment.
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24 Paragraph 5.1.10 imposes certain procedural requirements on SCI. First, SCI's claim "shall be
25 subject to procedural and legal objections by any Stipulating Party." Second, the Court must take
26 evidence before ruling on whether SCI has a Production Right. Third, Non-Stipulating Parties like SCI
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1 “shall be subject to all provisions of this Judgment, including reduction in Production necessary to
2 implement the Physical Solution and the requirements to pay assessments” to replace water pumped in
3 excess of their Production Right as may be reduced. In fact, SCI’s discussion on the subject in footnote
4 1 at page 6 of its brief is incorrect and seeks an adjusted right avoiding the application of equitable
5 principles. Stated differently, SCI seeks a shielded right superior to that of other Producers.
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7 The Judgment has already allocated all Native Safe Yield to Parties to the Judgment, so that
8 Production Rights granted to Non-Stipulating Parties exceed the Native Safe Yield. However, “[s]uch
9 allocations will not result in *continuing* overdraft, as the Physical Solution provides for the
10 Watermaster to adjust allocations or take other action necessary to prevent overdraft.” (Statement of
11 Decision at 23:26-28, *italics added*.)³ Paragraph 5.1.10 provides that this short-term overdraft is
12 addressed “whenever the Watermaster re-determines the Native Safe Yield pursuant to Paragraph
13 18.5.9, [when] the Watermaster shall take action to prevent Native Safe Yield Production from
14 exceeding the Native Safe Yield on a long-term basis.” (Judgment Paragraph 5.1.10, at 25:12-15.) The
15 Judgment allows this redetermination “[t]en Years following the end of the seven Year Rampdown
16 period, in the seventeenth (17th) Year, or any time thereafter . . .” (Paragraph 18.5.9).
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22 ³ Paragraph 5.1.10 provides that Material Injury is only evaluated if the total Production by Non-
23 Stipulating Parties is more than seven percent of the Native Safe Yield. Production within the seven
24 percent amount would involve overdraft, which would fall under the definition of Material Injury
25 provided in Paragraph 3.5.18.1, and no Material Injury analysis is performed presumably because that
26 amount of Material Injury is accepted until Native Safe Yield and Production Rights are re-determined.
27 This differs from SCI’s interpretation, that the lack of a Material Injury analysis for Non-Stipulating
28 Party Production Right under Paragraph 5.1.10 means that “by definition in the Judgment, Joshua
Memorial’s production will not result in any Material Injury in the Basin” (Motion at 1:14-15). In
short, SCI’s discussion of a “Material Injury” standard at page 6 of its points and authorities is
irrelevant to the questions before the Court.

1 **B. The Purpose and Objective of the Judgment Includes Equity.**

2 Paragraph 5.1.10 provides for “reduction in Production necessary to implement the Physical
3 Solution” but does not provide any standard for that reduction. One principle in the Physical Solution
4 is to provide “a fair and equitable basis for satisfaction of all water rights in the Basin.” (Paragraph
5 7.1.) Thus, reductions in Production imposed on Production Rights (including those determined for
6 Non-Stipulating Parties) must be fair and equitable in relation to all other Production Rights.
7

8 **III. ARGUMENT**

9 **A. Granting SCI a Production Right Based on Its Motion is Inconsistent**
10 **With the Process Described in Paragraph 5.1.10.**

11 SCI claims to have been in business and pumping groundwater in the AVAA since before these
12 cases began, and during the 15-year period that these consolidated cases were heavily litigated and
13 publicized. Yet SCI claims not to have been given adequate notice and seeks to have its Production
14 Right determined based on three years of post-Judgment production. Granting SCI a Production Right
15 based on its Motion would deny the Stipulating Parties the opportunity to make procedural or legal
16 objections and to test SCI’s claims through discovery, as Paragraph 5.1.10 requires. The Motion was
17 filed on October 11, 2019, with a response required 14 days later on October 25, 2019. This Motion
18 schedule does not allow for investigation followed by procedural or legal objections. SCI’s Motion is
19 based on hundreds of pages of supporting documents, including technical evaluations of historical
20 pumping. The schedule also does not provide a real opportunity to develop further evidence (including
21 technical evidence that may require use of an expert), and so, as a practical matter, the motion process
22 denies the Court any real opportunity to “take evidence” as called for in Paragraph 5.1.10.
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25 Even if SCI were to establish a Production Right, that claimed Production Right is still “subject
26 to . . . reduction in Production necessary to implement the Physical Solution . . .”. (Paragraph 5.1.10.)
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1 Granting SCI a Production Right equal to its claimed production, without any reduction, would give
2 SCI a Production Right superior to that of all of the Stipulating Parties. This result would be
3 inconsistent with Paragraph 5.1.10.

4 **B. Granting SCI a Production Right Based Solely on its Motion**
5 **Would Not Be Fair or Equitable to Other Parties.**

6 During the prove-up phase, the Public Water Suppliers established prescriptive claims dating
7 back to 1973 with prescriptive claims possibly occurring as early as 1951. Thus, before SCI may
8 establish a Production Right, it must first establish self-help, i.e., that it pumped groundwater during
9 the prescriptive periods. Although SCI generally alleges that it started producing groundwater in the
10 1950s, the only specific evidence of water use comes from the Coleman's declaration and technical
11 report regarding post-Judgment water use in years 2015 through 2017. SCI does not provide for a
12 Production Right that would be fair and equitable to other Parties with Production Rights.
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14 1. SCI incorrectly Uses a Post-Judgment Time Frame to Estimate Production.

15 SCI supports its Motion with production estimated in the June 11, 2019, Technical
16 Memorandum on "SCI California Funeral Services, Inc. dba Joshua Memorial Park Irrigation Water
17 Use Estimate," prepared by Jason Coleman. The Production is estimated using power records from
18 2015 through 2017. (Coleman Report at 4.) However, the Production Rights established in the
19 Judgment are based on production history during several periods of time, including the production
20 history for 2011 and 2012 established during the Phase 4 trial. (Statement of Decision at 2:2-3.) The
21 different time frames can impact the estimated Production amount that is the basis for the claimed
22 Production Right. Allowing SCI to establish a Production Right based on post-Judgment production is
23 inconsistent with the Judgment and would reward un-curtailed Post-Judgment pumping. It would also
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1 give SCI an inequitable advantage not shared by other Parties with Production Rights under the
2 Judgment.

3 2. SCI Does Not Evaluate Whether the Water Application Rate is Reasonable.

4 SCI estimates that its average annual Production is 122 acre-feet per year (Motion at 2:11), and
5 that the “majority use of groundwater from the well is for irrigation of the cemetery grounds” (Motion
6 at 2:16-18). SCI asserts that the present cemetery grounds occupy approximately 21 acres (Twitchell
7 Declaration at 2:15-18).⁴ This indicates that the water application for the cemetery is more than 5.8
8 acre-feet per acre (122 acre-feet divided by 21 acres), and if part of the cemetery is not planted (say,
9 roads), then the water demand per acre would be higher. The Coleman Report does not compare this
10 water demand with that of the overlying uses or explain why this high water demand is reasonable.
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13 3. SCI Does Not Identify all Purposes of Use and the Amount of Use
14 Associated with Each Purpose.

15 SCI’s statement that “[t]he *majority use* of groundwater from the well is for irrigation of the
16 cemetery grounds, which includes turf, various trees and shrubs and other vegetation, all supplied by
17 the groundwater well” (Memo of Points and Authorities at 2:16-18, emphasis added) shows that some
18 groundwater use is for unidentified purposes. The amount and purpose of the non-“majority use”
19 cannot be evaluated because it is not documented.
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21 4. SCI’s Claimed Production Right is Inconsistent with Paragraph
22 5.1.10 Because It Does Not Propose a Severe Reduction in the Production Right
23 Like That Imposed on Other Production Rights Holders.

24 SCI does not explain why its Production Right should be equal to its full claimed post-
25 Judgment Groundwater Production without “including reduction in Production necessary to implement
26 the Physical Solution” as called for in Paragraph 5.1.10. A Production Right based on SCI’s full post-

27 ⁴ The amount of land irrigated *currently* by SCI is irrelevant, since cemeteries expand, not contract,
28 over time. The proper inquiry is how much water was used and how much land was irrigated prior to 2015. SCI offers no evidence of water use prior to 2015.

Judgment production is not fair to all the other Parties that have been forced to take severe reductions.

For example, this Court has previously stated:

- Landowner Parties – “The Court finds that the Landowner Parties and the Public Overliers will be required to make severe reductions in their current and historical reasonable and beneficial water use under the physical solution” (Statement of Decision at 11:14-16). The reductions for landowner Parties can be seen in Exhibit 4 of the Judgment. For example, Littlerock Aggregate et al. received a Production Right representing only 37 percent of its pre-Judgment Production. Gary Van Dam et al, received only 32 percent.
 - Public Water Suppliers - The Public Water Supplier Parties have an aggregate Production Right of 12,345 acre-feet per year (Exhibit B of the Judgment), which is only about 38 percent of the Prescriptive Amount established at trial of 32,536.35 acre-feet per year (Statement of Decision at 8:1-16). The Court found that “their allocations are fair and reasonable in light of their historical and existing reasonable and beneficial uses, and the significant and material reductions thereto required by the Physical Solution” (Statement of Decision at 8:27-9:2)
 - Supporting Landowners - The Non-Stipulating Parties that were granted Production Rights based on Paragraph 5.1.10 of the Judgment also were “required to make severe reductions in their current and historical reasonable and beneficial water use under the Trial Stipulations and the Physical Solution” (Statement of Decision at 13:2-5)
5. SCI Does Not Attempt to Reconcile Its Claimed Production Right with Similarly Situated Parties.

Apportioning correlative rights is a complicated, equitable process that can depend on many factors. As noted by one court:

[M]any factors are to be considered in determining each owners proportionate share: the amount of water available, the extent of ownership in the basin, the nature of the projected use -- if for agriculture, the area sought to be [49 Cal. App. 3d 1002] irrigated, the character of the soil, the practicability of irrigation, i.e., the expense thereof, the comparative profit of the different crops which could be made of the water on the land -- all these and many other considerations must enter into the solution of the problem.

(Tehachapi-Cummings County Water District v. Armstrong, 49 Cal.App.3d (1975) 997, 1001-1002).

SCI’s attempt to obtain its full estimated recent Production as a Production Right through the Motion

1 does not consider any of the equities for granting this right in an over-drafted Basin where other
2 Production Rights have been severely reduced to correct overdraft. SCI's attempt to obtain a
3 Production Right through this Motion also does not provide the Court with the time needed to address
4 this issue, Further, it does not allow the Parties to evaluate and possibly negotiate a resolution of SCI's
5 claim (as was done for the Supporting Landowners).

6
7 **C. Granting a Production Right to SCI under Paragraph 5.1.10 Should**
8 **Require More Complete Evaluation of Notice.**

9 SCI's request to intervene is based on the premise that SCI or its predecessor is not already a
10 Party to the Judgment, and the assertion that "neither Joshua Memorial nor SCI, was ever named or
11 served or otherwise joined in the Adjudication." (Motion at 3:9-12.) While SCI documents its absence
12 from lists of Parties in the Judgment, this does not mean that SCI lacked notice of the Adjudication,
13 which requires evaluation of additional factors.

14 First, the 15-year adjudication was well publicized and involved two classes. Indeed, notice of
15 the Summons was published in local papers, and the Judgment itself was recorded in Kern and Los
16 Angeles counties. Given SCI's long-standing presence in the AVAA, SCI should have been aware that
17 groundwater rights were being adjudicated.

18 SCI also does not fit the expected profile of entities that might avail themselves of Paragraph
19 5.1.10 if they were Producing before entry of the Judgment but were unknown. SCI's claims would
20 make it a relatively large groundwater producer (its 122 acre-feet per year of Production is greater than
21 the Pre-Rampdown Production for almost half of the Parties on Exhibit 4). During the litigation, Los
22 Angeles County Waterworks District No. 40 ("District 40"), which had primary responsibility to
23 accomplish notice reported "that we have now served everyone that we are aware of that pumps more
24 than one Hundred acre-feet in the Basin" (Transcript of December 18, 2007 hearing at 24:3-12, as
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1 included in Request for Judicial Notice dated February 20, 2008). Based on this, most entities
2 potentially seeking a right under Paragraph 5.1.10 would be expected to have less than 100 acre-feet of
3 annual Production. SCI is also located in a developed portion of the City of Lancaster, is within
4 District 40's service area, and receives water service from District 40 to meet a portion of its water
5 demands, which makes it unlikely that it was not aware of the Adjudication.
6

7 One impediment to identifying SCI or its predecessor as a Producer is that SCI apparently did
8 not file notices of groundwater extractions with the State Water Resources Control Board ("SWRCB")
9 as required by Water Code sections 4999, *et seq.* SCI's Motion did not include this evidence. Under
10 these Water Code provisions, failure to file the annual notices with the SWRCB "shall be deemed
11 equivalent for all purposes to nonuse for such year of any groundwater," unless the aggregate
12 production does not exceed 25 acre-feet (Water Code § 5004). SCI's failure to file the annual notices
13 may have contributed to District 40's failure to individually serve SCI or its predecessor as a
14 significant Producer, either by making it difficult to identify their status as a Producer, or it may have
15 resulted from a belief that SCI was a potential member of the Small Pumper Class with production of
16 25 acre-feet per year or less. If, by operation of section 5004, SCI is determined to have not used any
17 water during the prescriptive period, then SCI may have lost its water right through prescription and
18 non-use.
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21 SCI could also have received notice by means other than individual mail service. For example,
22 some of SCI's water demands are met by deliveries from District 40. Information about the
23 adjudication may have been included with water bills, which could have provided SCI with notice. SCI
24 or its predecessors might also have received notice by publication. As a significant business operation,
25 SCI's activities in the business community increase the likelihood that SCI knew about the
26 adjudication. The development of more information about the historical groundwater production by
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1 SCI would also allow a more informed evaluation of whether SCI would be better classified as an
2 unknown member of the Small Pumper Class, if it had annual Production of less than 25 acre-feet per
3 year.

4 IV. CONCLUSION

5 While the Landowner Parties do not oppose SCI's intervention so that SCI is firmly bound by
6 the Judgment, they oppose granting SCI a 122 acre-foot per year Production Right as a Non-
7 Stipulating Party based on its Motion. The Court should deny without prejudice that part of SCI's
8 Motion seeking a Production Right and initiate a trial phase to develop and evaluate evidence on SCI's
9 water rights claim, in a process that meets the requirements of Paragraph 5.1.10. These requirements
10 include allowing for discovery, giving Parties the opportunity to lodge procedural or legal objections,
11 and taking of evidence. This evidence can then be used by the Court to define an appropriate
12 Production Right that includes a reduction as necessary to implement the Physical Solution in an
13 equitable way to all other Parties to the Judgment. Early steps in a trial phase could include a meet and
14 confer for interested Parties, and holding an initial case management conference.

15 In defining an appropriate litigation process, the Court can use its earlier experience in applying
16 Paragraph 5.1.10 to define Production Rights for the Supporting Landowner Parties as a guide, as
17 discussed in Section VII of the Statement of Decision (beginning on page 12). That process included:

18 Each Supporting Landowner Party has proven its respective land ownership or other
19 appropriate interest in the Basin, and its reasonable and beneficial use, and
20 established its overlying right.

21 Here, the Court heard evidence from the Supporting Landowner Parties in the sixth
22 phase of trial. Based on the credible and undisputed evidence presented by the
23 Supporting Landowner Parties, the Court finds that there is substantial and credible
24 evidence that each Supporting Landowner Party has reasonably and beneficially used
25 amounts of water. The Court finds that the Supporting Landowner Parties will be
26 required to make severe reductions in their current and historical reasonable and
27 beneficial water use under the Trial Stipulations and the Physical Solution. The Court
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1 further finds that there is substantial evidence that all allocations of groundwater in
2 the Trial Stipulations and the Physical Solution will effectively protect the Basin for
existing and future uses.

3 (Statement of Decision at 12:22-13:7, citations omitted.) Under this process, the Parties were
4 ultimately able to negotiate the reductions in Production required under Paragraph 5.1.10, as provided
5 in "Trial Stipulations for Admission of Evidence by Non-Stipulating Parties and Waivers of Procedural
6 and Legal Obligations to Claims by Stipulating Parties Pursuant to Paragraph 5.1.10 of the Judgment
7 of Physical Solution." (Statement of Decision at 12:4-10.) A trial phase to address SCI's water-right
8 claim should provide a similar process both to develop relevant evidence, and to potentially allow a
9 proposed settlement between the Parties to define that water right.
10

11 Dated: October 24, 2019

KUHS & PARKER

13 By 

14 Robert G. Kuhs, Attorneys for Tejon
15 Ranchcorp

16 Dated: October 24, 2019

RICHARDS, WATSON & GERSON

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19 Valley-East Kern Water Agency

1 Dated: October 24, 2019

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