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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**

14
15 Coordination Proceeding

Judicial Council Coordination
Proceeding No. 4408

16 ANTELOPE VALLEY GROUNDWATER
17 CASES,

**REPORT ON MEET AND CONFER
PROCESS ON WATERMASTER
APPOINTMENT AND ELECTION
RULES, AND RESPONSE TO
OBJECTION BY LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40**

18 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.

19 Los Angeles County Waterworks District No.
20 40 v. Diamond Farming Co.

Date: October 18, 2016
Time: 9:00 a.m.
Dept.: Room 222 (LASC)

21 Wm Bolthouse Farms, Inc. v. City of
Lancaster

The Hon. Jack Komar, Dept. 17
Santa Clara Case No. 105 CV 049053

22 Diamond Farming Co. v. City of Lancaster

23 Diamond Farming Co. v. Palmdale Water
24 District,

Riverside County Superior Court
Lead Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840

25 AND RELATED ACTIONS

Los Angeles Superior Court Case
No. BC 325201
Kern County Superior Court Case
No. S-1500-CV-254348

1 **INTRODUCTION**

2 This report updates the Court on the outcome of efforts by the Exhibit 4 landowners
3 (Landowners) to meet and confer with Los Angeles County Waterworks District 40 (WWD40) and
4 certain other public water suppliers¹ (collectively Public Water Suppliers, or PWS) who objected to
5 the Landowners’ voting rules for their two Watermaster representatives. This report also responds to
6 WWD40’s Objection to Proposed Order Prepared by City of Los Angeles (Objection).

7 During the hearing on the Landowner voting rules, WWD40 requested the opportunity to meet
8 and confer in order to resolve these issues. Following the hearing, the Landowners asked to meet and
9 confer on a proposed order and revised voting rules. After remaining silent for more than a month and
10 ignoring the request to meet and confer, WWD40 now quibbles with the proposed order and presents
11 this Court with an elaborate Objection to the revised rules. WWD40’s Objection should be rejected
12 and the Landowners’ revised voting rules should be approved.

13 **LANDOWNERS’ ATTEMPT TO MEET AND CONFER**
14 **AFTER HEARING ON LANDOWNER VOTING RULES**

15 At the conclusion of the September 8, 2016, hearing, the Court directed counsel for the City of
16 Los Angeles (City), an Exhibit 4 Landowner, to prepare an order directing the parties to meet and
17 confer on the Landowners’ voting rules for their two Watermaster representatives.

18 On September 12, 2016, the City provided the Public Water Suppliers with a proposed order
19 and revised Landowner voting rules. The City asked the Public Water Suppliers to respond to the
20 proposed order by no later than September 28, 2016, and asked to meet and confer on the revised
21 Landowner voting rules as soon as possible in advance of the October 18, 2016, hearing on the rules.

22 As explained in the City’s October 3, 2016, filing of the proposed order with the Court,
23 counsel for Cal Water said he did not approve the proposed order but, when asked to explain, failed to
24 provide a meaningful explanation and elected not to propose any revisions to the proposed order.

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26 ¹ Little Rock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake Community
27 Services District, Quartz Hill Water District and California Water Service Company (Cal Water)
28 joined WWD40 in objecting to the Landowners’ voting rules for their two Watermaster
representatives.

1 Neither WWD40 nor any other party responded to the proposed order until WWD40 filed its
2 Objection with the Court on October 12, 2016. The proposed order remains pending.

3 More importantly, neither WWD40 nor any other party responded to the Landowners’
4 September 12, 2016, request to meet and confer on revised Landowner voting rules — until WWD40
5 filed its Objection on October 12, 2016.

6 **THE LANDOWNERS’ REVISED WATERMASTER VOTING RULES**
7 **SHOULD BE APPROVED**

8 *The September 8, 2016, Hearing:* At the hearing, the City explained that the Watermaster’s
9 two Landowner seats and two Public Water Supplier seats (one seat for WWD40 and the other for the
10 remaining Public Water Suppliers) “represents a balance of voting power that needs to be preserved
11 against dilution in the event that a public water supplier acquires Exhibit 4 water” from a Landowner.
12 (September 8, 2016, hearing transcript (Trans) at 46:10-25, attached hereto as Exhibit A.) In other
13 words, the Public Water Suppliers “may acquire Exhibit 4 water, they just can’t vote for the
14 landowner representatives.” (*Id.* at 46:26-27.) The Court agreed:

15 At this point I do think that it’s important to maintain the balance of
16 power that’s been created. One of the reasons for that is that the
17 interests of a landowner who’s producing water for use on the
landowner’s land has a particular mindset and concern. The public
water producers have a very different concern.

18 (*Id.* at 51:26-28 to 52:1-3.)

19 Still, the Court expressed concern about one sentence in the proposed voting rules referring to
20 the Judgment’s definition of an Exhibit 4 Landowner’s “successor in interest”:

21 Successors in interest to Exhibit 4 parties may not include non-
22 production right holders, as discussed in section 16.2 of the
23 judgment, because they would not hold rights subject to the same
limitations as overlying production right holders listed on original
Exhibit 4.

24 (Trans. at 53:6-14.) The Court’s concern was that “this language might be too much forever, and I
25 don’t think anything is forever.” (*Id.* at 52:8-9.) The Court explained: “Frankly, I would be happy to
26 approve this, striking that language, but that is not to say that if the landowners sell their property to
27 the public parties or the public producers that those public producers automatically are going to be
28 able to vote.” (*Id.* at 53:15-19.) WWD40 agreed: “That’s the only concern we have, is that the

1 proposed language on its face would forever close the door. It would bind the Court today in the
2 event of future changing circumstances. All we're asking is that the Court not accept just that
3 language that it's identified" (*Id.* at 53:21-26.) Thus, the Court concluded:

4 I'm inclined to modify this language to ensure that everybody
5 understands that their rights are going to be protected and that
6 parties who have disparate interests will not be able to participate in
7 the vote of the landowner group and its members if they are not a
8 member of that group, not just in name, but because of the disparate
9 interests.

8 (*Id.* at 61:9-14.) When the Court asked for proposals, WWD40 agreed and stated:

9 If it's acceptable to the moving parties, we are coming back in
10 October. But before then, perhaps we could meet and confer. We
11 have a long history of doing that. I, for one, am optimistic we might
12 be able to resolve this. I think we understand the concerns.

12 (*Id.* at 65:14-20.)

13 ***The Landowners Propose Revised Voting Rules:*** On September 12, 2016, the Landowners
14 provided the WWD40 and the other Public Water Suppliers with revised voting rules: (1) to clarify
15 that the Court may change the rules in response to material changes in circumstances and (2) to delete
16 the "successors in interest" sentence specified by the Court. A copy of those revised rules is attached
17 at Exhibit B. The revised rules showed those changes in underline (new language added) and strike-
18 out (original language deleted) as follows:

19 SECTION 1 – GENERAL PROVISIONS

20 Consistent with the Court's continuing jurisdiction, as set forth in
21 Section 6.5 of the Judgment and Physical Solution, the Court may
22 change these rules and procedures in response to material changes in
circumstances. The parties may propose such changes by noticed
motion.

23 (Exh. B at 2.) Locating the preceding language within the General Provisions section at the beginning
24 of the voting rules is intended to acknowledge this Court's authority to update *any* of the rules based

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1 on changed circumstances — not just the Landowner voting rules. Deletion of the “successor in
2 interest” language from Section 5.A of the voting rules is proposed as follows:

3 This document sets forth the rules and procedures for electing the
4 two landowner Party Watermaster representatives. ~~Successors in
5 interest to Exhibit 4 Parties do not include Non-Overlying
6 Production Right holders as discussed in Section 16.2 of the
7 Judgment, because they would not hold rights subject to the same
8 limitations as Overlying Production Rights holders listed on original
9 Exhibit 4. Accordingly, a~~Any Non-Overlying Production Right
holder that acquires Exhibit 4 Overlying Production Rights may not
use the acquired Overlying Production Rights to nominate, vote for,
or otherwise participate in the election of the two landowner
Watermaster representatives or their alternates.

9 (Exh. 2 at 4.)

10 The Landowners submit that the revised rules, attached hereto as Exhibit B, are faithful to the
11 Court’s direction at the September 8, 2016, hearing and should be approved.²

12 **WWD40’S “OBJECTION EDITS” SHOULD BE REJECTED**

13 Despite the promise to meet and confer, WWD40 elected to ignore the revised voting rules
14 proposed by the Landowners on September 12, 2016, and now files an Objection six days before the
15 October 18, 2016, hearing to approve revised rules. WWD40’s Objection asks this court to approve
16 “Objection edits” to the Landowners’ revised voting rules. (WWD40 Objection at 1:27-28.)
17 WWD40’s “Objection edits” should be denied as untimely and unfaithful to this Court’s direction at
18 the September 8, 2016, hearing.

19 First, striking the “subject-to-change” provision from the voting rules’ Section 1 General
20 Provisions and tying it solely to the Section 5.A voting rules for the Watermaster’s Landowner
21 representatives implies that *only* the Landowner voting rules are subject to change. That is illogical
22 and could prove troublesome if non-Landowner parties seek to change voting or appointment rules for
23 their Watermaster representatives in the future. For example, WWD40 has failed to provide any
24 appointment or voting rules for its Watermaster representative. All versions of the rules state in
25 Section 3: “RULES NOT YET RECEIVED FROM DISTRICT NO. 40.” If WWD40 ever seeks

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27 ² Of course the underline and strike-out edits would be accepted to create a “clean” version for use
28 in administering Watermaster elections and appointments until further order of the Court.

1 Court approval for its method of selecting its Watermaster representative, it would be helpful if the
2 existing rules expressly provide that the Court may change the rules generally — not just the
3 Landowners’ rules.

4 Second, WWD40’s “Objection edits” to Section A.5 of the Landowner voting rules imply that
5 *any* change in “facts or evidence known to the Court as of October 18, 2016” could justify a revision
6 to the Landowner voting rules to allow Public Water Suppliers to nominate and vote for the
7 Watermaster’s two Landowner representatives. But such an approach directly conflicts with this
8 Court’s concern that “landowner groups, especially some of the smaller landowners, might be very
9 concerned about there being a power grab and an attempt to influence the election of their members *by*
10 *public water producers who just had, perhaps, a single vote.*” (Trans. at 56:15-19 [emphasis added];
11 *see* Trans. at 57:5-7 [Court: “it’s important that there be some limits as to what the public water
12 producers can do in the event they do acquire some nominal or other interest in this [Exhibit 4]
13 water”].)

14 The Judgment and Watermaster voting rules will be in place for many decades, if not in
15 perpetuity. Having presided over more than 16 years of litigation in this case, the Hon. Jack Komar’s
16 sense of which changes in circumstances are material with respect to voting and appointment rules for
17 Watermaster representatives is likely to be better calibrated than a brand new judge taking the reins
18 some day in the future. The revised voting rules proposed by the Landowners strike the right balance
19 by making it clear that the voting and appointment rules for *all* Watermaster representatives are
20 subject to the Court’s continuing jurisdiction to make changes based on evolving circumstances —
21 without implying that only the rules for the Landowner representatives are subject to revision and that
22 such revisions may be justified by immaterial changes in circumstances. WWD40’s “Objection edits”
23 should be rejected.

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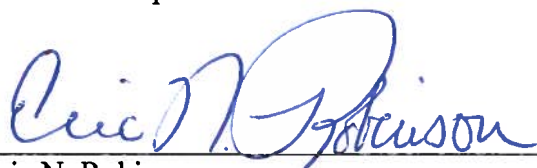
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1 **CONCLUSION**

2 For all the preceding reasons, this Court should approve the revised Watermaster voting and
3 appointment rules attached hereto as Exhibit A.


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5 Dated: October 14, 2016

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

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7
8 By: 
Eric N. Robinson
9 Attorneys for CITY OF LOS ANGELES
10 and LOS ANGELES WORLD AIRPORTS

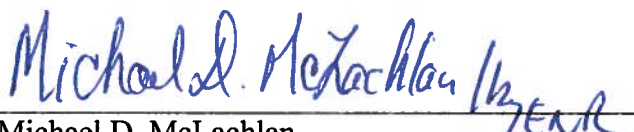
11 Dated: October 14, 2016

BRUNICK, MCELHANEY & KENNEDY

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14 By: 
Leland P. McElhaney
15 Attorneys for ANTELOPE VALLEY EAST –
16 KERN WATER AGENCY

17 Dated: October 14, 2016

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1 Dated: October 14, 2016

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6 DISTRICTS OF LOS ANGELES COUNTY NOS.
7 14 AND 20

7 Dated: October 14, 2016

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3 **PROOF OF SERVICE**

4 I, Terri Whitman, declare:

5 I am a citizen of the United States and employed in Sacramento County, California. I am over
6 the age of eighteen years and not a party to the within-entitled action. My business address is 400
7 Capitol Mall, 27th Floor, Sacramento, California 95814. On October 14, 2016, I served a copy of the
8 within document(s): **REPORT ON MEET AND CONFER PROCESS ON WATERMASTER**
9 **APPOINTMENT AND ELECTION RULES, AND RESPONSE TO OBJECTION BY LOS**
10 **ANGELES COUNTY WATERWORKS DISTRICT NO. 40** via electronic posting to Odyssey
11 eFileCA, including electronic filing with the Santa Clara Superior Court.

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

14 Executed on October 14, 2016 at Sacramento, California.

15
16 

17 _____
Terri Whitman