

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

**ORDER AFTER HEARING ON
JANUARY 27, 2014**

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

**1. Motion by Cross-Complainant
Antelope Valley Groundwater
Agreement Association
("AGWA") for Summary
Adjudication re Federal Reserve
Right**

Wm. Bolthouse Farms, Inc. v. City of Lancaster
Diamond Farming Co. v. City of Lancaster
Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California, County of
Riverside, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Hearing Date(s): January 27, 2014
Time: 10:00 a.m.
Location: Old Dept 1A (Mosk)

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Judge: Honorable Jack Komar, Ret.

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

1 AGWA's motion seeks summary adjudication of the following issue:

2 That "no triable issue of material fact exists as to the establishment and existence of a
3 "federal reserve right" to the native "ground water of the Antelope Valley Adjudication Area
4 ("AVAA"). And, because there is no triable issue as to any material and, as a matter of law, said
5 cause of action is without merit."

6 On the undisputed evidence before the court, AGWA has failed to establish that the
7 United States' claim of federal reserved water rights within the Antelope Valley basin that are
8 "prior and paramount" to the water rights of all other parties is without merit. AGWA has thus
9 failed to establish it is entitled to summary adjudication as a matter of law.

10 First, it is noted that the federal government has not filed any cause of action seeking a
11 federal reserve right. The federal government is a party defendant or cross defendant and has not
12 filed a complaint or cross complaint in these proceedings. Instead, it has been served and has
13 filed an answers admitting and denying certain allegations but specifically asking the court in its
14 Ninth Affirmative Defense in its Answer to find that its rights in its reserved lands are superior to
15 all others if the court enters a comprehensive judgment in the case. That is, the answer states an
16 affirmative defense and does not plead a cause of action for positive relief. Because of the
17 courts' previous orders coordinating and consolidating the various actions and cross actions, it is
18 appropriate however to consider a summary adjudication of the issue in any event.

19 California Code of Civil Procedure Section 437c provides for summary adjudication of
20 causes of actions and defenses. Here, based on the affirmative defense pleaded by the federal
21 government, the court can summarily adjudicate the extent of a federal "right to water" if it is
22 established that there are no disputed facts with regard to the issues.

23 The only evidence presented by moving party relates to the creation of 8 reservations
24 (versus ten conceded by the federal government) ceded to the federal government by the State of
25 California and a legal argument that the rights reserved were only to a correlative share of the
26 water in the basin.

27 The evidence in opposition to the motion as to the creation of the federal reservations is
28 not disputed and that evidence permits the court to determine that in fact there is a federal

1 reservation for military purposes for all ten executive orders but there is no evidence presented to
2 establish what quantity of water is necessarily reserved for military purposes nor what is used for
3 secondary purposes, if any. Accordingly, the Motion to summarily adjudicate that there is no
4 federal reserve right in the Antelope Valley Adjudication Area must be denied. The Federal
5 Government seeks no affirmative relief in these motion proceedings.

6 While a great deal of the reported cases relate to the creation of riparian and
7 appropriative rights on Indian reservations by the federal government, the principles of law are
8 not radically different when it comes to federal reserve rights for military and other reserved
9 purposes. The case of Winters v. the United States (1908) 207 U.S. 564 establishes the basic
10 principle that when the government reserves land for a particular purpose, it reserves sufficient
11 water to accomplish the purpose for which the land was reserved. The powers of the government
12 to reserve waters and exempt them from state law "is not denied and could not be." Winters,
13 *supra*.

14 Moving party (AGWA) contends that the language in the executive orders creating the
15 reservations for military purposes provides that the reservations are subject to existing rights and
16 that those rights must be the rights of overlying owners to the reasonable and beneficial use of
17 water under their land (water rights) and therefore those rights stand equally with and limit the
18 rights of the federal government. AGWA's interpretation is incorrect.

19 The United States Constitution which gives the federal government complete control over
20 its land (whether by reservation or by purchase) and insulates it from state law. See U.S.
21 Constitution, Article 1, Section 17, and Article IV, Section 3 (2).

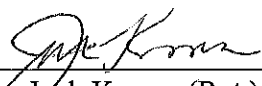
22 When the federal government reserves land for a particular purpose it by implication
23 reserves all appurtenant water then unappropriated needed to accomplish the purposes of the
24 reservation. See Cappaert v. United States (1976) 426 U.S. 128. The evidence presented here is
25 that the land acquired by executive order was in each case ceded by the State of California to the
26 federal government with no reservations of any kind. California law provides that the state owns
27 all water in the state in the sense that it has the power to regulate and supervise its uses. State of
28

1 California v. Superior Court (2000) 78 Cal. App. 4th 1019. When the stated ceded control of the
2 land which then was reserved by executive order, it ceded all power of control.

3 AGWA is wrong in its characterization of the rule in the case of In re Hallett Creek
4 Stream System, 44 Cal. 3d 448. That case, consistent with U.S. Supreme Court cases, holds that
5 the federal claim was for uses beyond the purpose of the reservation and therefore it was a claim
6 as a riparian owner because the purpose for which the water was sought could not arise by
7 implication from the reservation. See U.S. v. New Mexico 483 U.S. 696 (1978). The claim of a
8 riparian (or over-lying groundwater) owner, whether federal, state, or otherwise, may be a
9 correlative, usufructuary right when the water does not fall within the purpose for which the
10 reservation was made.

11 The Motion is therefore **DENIED**.

12
13 Dated: 1-30-2014



Hon. Jack Komar (Ret.)
Judge of the Superior Court