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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California County of Los Angeles, Case No. BC 325 201 Los Angeles County Waterworks District No. 40 v. Diamond Farming Co. Superior Court of California, County of Kern, Case No. S-1500-CV-254-348Wm. 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 No. RIC 353 840, RIC 344 436, RIC 344 668

) Judicial Council Coordination Proceeding
) No. 4408
)

) **Santa Clara Case No. 1-05-CV-049053**
) Assigned to The Honorable Jack Komar
)

) **AGWA’S NOTICE OF MOTION AND**
) **MOTION FOR LEGAL FINDINGS**
) **REGARDING SCOPE OF RIGHTS OF**
) **FEDERAL DEFENDANTS;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT THEREOF**

) **Date: February 14, 2012**
) **Time: 9:00 am**
) **Room: 1515**
)

MOTION REGARDING SCOPE OF RIGHTS OF FEDERAL DEFENDANTS

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 The Antelope Valley Groundwater Agreement Association (“AGWA”) moves this Court to
3 request confirmation that any rights of Federal Defendants to the Basin’s groundwater are subject to
4 the priority of overlying groundwater rights in existence at the time of the vesting of Federal
5 Defendants’ rights. This motion is based upon the accompanying Memorandum of Points and
6 Authorities and all supplemental papers; and oral argument presented at the time of the hearing on
7 this motion, and is made on the grounds that in order that the parties may efficiently prepare to
8 present evidence relevant to the issues the Court designates to be heard in fourth phase of trial, the
9 parties must know the Court’s understanding of the rights that are subject to prove up at trial.

10 While AGWA believes that engaging in pre-trial motion practice at this time is inappropriate
11 and counter-productive to the settlement efforts underway, this motion is brought at this time at the
12 Court’s direction given at the December 13, 2011 hearing.

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15 Dated: January 18, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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17 By: 
18 MICHAEL T. FIFE
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20 ATTORNEYS FOR AGWA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Antelope Valley Groundwater Agreement Association (“AGWA”) submits this Motion to request that the Court confirm that any rights of the United States Government (“Federal Defendants”) to the Basin’s groundwater are subject to the priority of overlying groundwater rights in existence at the time of the vesting of Federal Defendants’ rights. To allow the parties’ preparation for the fourth phase of trial in this matter to proceed as efficiently as possible and not to result in the waste of the time and resources of the Court and the parties, the parties must know the Court’s understanding of the rights that are subject to prove up at trial.

II. THE RIGHTS OF FEDERAL DEFENDANTS ARE SUBJECT TO THE PRIORITY OF EXISTING OVERLYING GROUNDWATER RIGHTS

A. A Comprehensive Adjudication is Necessary to Ensure Federal Defendants are Subject to the Court’s Jurisdiction

Federal Defendants claim substantial interests in the Antelope Valley Area of Adjudication (the “Basin”) through ownership of Edwards Air Force Base (“Edwards”). Federal Defendants have requested that the Court set a fourth phase of trial to include the determination of “the correlative rights to ground water, including prescriptive claims to determine the vested rights of parties in the adjudication.” (Federal Defendants’ November 14, 2011 Case Management Statement.) Federal Defendants have indicated that during such a phase of trial they intend to claim a federal reserved water right. (*Id.*) In order to ensure that the Federal Defendants’ sovereign immunity to suit is waived and they can be held to the rights adjudicated in this proceeding, and not allowed to make a larger claim at a later date – to the detriment of all other pumpers in the Basin – this adjudication must comply with the requirements of the McCarran Amendment.

The McCarran Amendment creates a narrow exception to sovereign immunity in certain circumstances, allowing the United States to be joined as a defendant “in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of, or is in the process of, acquiring water rights by appropriation under State law, by purchase, by exchange, or

otherwise and the United States is a necessary party to such suit.” (43 U.S.C. § 666.) The Amendment states that in these situations the United States will be deemed to have waived its sovereign immunity, and shall be subject to the judgments of the court having jurisdiction. (*Id.*) The McCarran Amendment’s waiver is limited to “comprehensive adjudications” of all of the water rights of various users of a specific water system. To be deemed “comprehensive,” the adjudication must name all water users on the stream system and must generally extend to the full hydrological extent of the stream system or other source of water at issue. (*Colorado River Water Conservation Dist. v. U. S.* (1976) 424 U.S. 800, 819; *Dugan v. Rank* (1962) 372 U.S. 609, 618.)

The parties and the Court have bent over backwards to ensure that the McCarran Amendment’s requirement of a comprehensive adjudication has been met, allowing the Federal Defendants to be subject to the Court’s jurisdiction in this case. While the Federal Defendants may be given deference in determining what may be necessary to ensure compliance with the McCarran Amendment’s requirements, the McCarran Amendment does not extend such deference to the federal government in the definition of the federal government’s water rights. The water rights are subject to the priority of water rights existing at the time of vesting of Federal Defendants’ rights.

B. The Rights of Federal Defendants are Defined at the Time They Vest

As described above, the Federal Defendants have indicated that they will claim a federal reserved water right to the waters of the Basin.¹ AGWA believes it is likely that Federal Defendants will also claim water rights associated with property acquired through eminent domain (*see McKendry v. United States* (9th Cir. 1958) 254 F.2d 659 [greater than 2000 acres were condemned for use as part of Edwards]) and those rights associated with property acquired through arm’s length purchases. Regardless of the source of Federal Defendants’ water rights associated with the Edwards property, AGWA wishes for the Court to make clear what the parameters of such a right might be in the Basin, in order to focus the parties’ efforts in preparation for a Phase 4 trial.

1. *Federal Defendants Succeed to the Water Rights Associated with Acquired Lands*

¹ Federal Defendants have set forth no proof in support of such a claim and AGWA does not concede that Federal Defendants can establish such a right.

As described above, AGWA believes that Federal Defendants may claim rights to the waters of the Basin associated with property within the Basin that were acquired through eminent domain or through purchase from private landowners. The prevailing position in case law and literature is that any rights Federal Defendants may have acquired in association with those lands are as an “ordinary proprietor” to the extent of the rights possessed by Federal Defendants’ predecessors in title upon purchase or condemnation of those properties. (See JUNGREIS, “PERMIT” ME ANOTHER DRINK: A PROPOSAL FOR SAFEGUARDING THE WATER RIGHTS OF FEDERAL LANDS IN THE REGULATED RIPARIAN EAST (2005) 29 Harv. Envtl. L.Rev. 369, 388-89, citing to *California v. United States* (9th Cir. 1956) 235 F.2d 647.) This is consistent with the rights of the United States associated with properties it acquired from private landowners for Marine Corps Base Camp Pendleton. (*California v. United States* (9th Cir. 1956) 235 F.2d 647.) As the rights associated with those properties at the date of acquisition are dependent upon state law (*id.* at 653-654), the rights associated with acquired properties are overlying rights, derived from the ownership of the land overlying the Basin.² (See *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240 (describing basis for overlying rights).)

2. *Any Reserved Right is Subject to Overlying Rights in Place at the Time of the Reservation*

Any federal reserved water rights that may have vested in Federal Defendants are similarly subject to the priority of overlying rights existing at the time the federal reserved rights vested. A federal reserved water right is the right to the use of water sufficient to accomplish the primary purpose of the land that has been reserved from the public domain.³ (*Winters v. United States* (1908)

² If, contrary to AGWA’s position, it is found that rights associated with certain properties have been lost through other parties’ perfection of prescriptive rights, to the extent the Federal Defendants succeeded to the rights of property owners whose overlying rights had been so lost, Federal Defendants would similarly have no greater water right associated with those properties.

³ Public domain lands are those “lands open to settlement, sale, or disposition under the federal public land laws.” (See *In re Water of Hallett Creek Stream System* (1988) 44 Cal. 3d 448, 456 n.5.)

207 U.S. 564; *United States v. Rio Grande Dam & Irrigation Co.* (1899) 147 U.S. 690.) In general, the amount of a federal reserved right is quantified based on the amount of water reasonably necessary to fulfill the primary purpose of the reservation. (*Cappaert v. United States* (1976) 426 U.S. 128, 141 [The federal reserved water right “reserves only that amount of water necessary to fulfill the purpose of the reservation, no more.”] (citing *Arizona v. California I* (1963) 373 U.S. 546, 600-01); *United States v. New Mexico* (1978) 438 U.S. 696, 700, 705-11 [the purpose of the reservation is determined as of the date of its establishment]).) However, not only is the quantity of the federal reserved right determined by the intent and purpose of the reservation, the quantity is additionally subject to the availability of water at the time of the reservation: “The issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purposes for which the reservation was created.” (*Cappaert, supra*, 426 U.S. at 139.)

In withdrawing land from the public domain, the United States “reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation [and] acquires a reserved right in unappropriated water which vests on the date of the reservation....” (*Cappaert, supra*, 426 U.S. at 138.) Such water rights are subject to the priority of water rights that pre-date the reservation. (See JUNGREIS, *supra*, 29 Harv. Envtl. L.Rev. at 376-77 [prior to reservation of land from public domain, private water rights vested under state law, recognized as enforceable against other users, including the federal government] (citing *United States v. New Mexico, supra*, 438 U.S. 696, 713 n.21).)

The Antelope Valley has long been settled, and land within the Basin has long been held in private ownership. While Federal Defendants have not yet submitted evidence demonstrating the date of any reservation alleged to have created a federal reserved right, the fact that a portion of Edwards was brought into federal ownership through the condemnation of private property demonstrates that this is the case. (See *McKendry, supra*.) Under California law, each of the owners of properties overlying the Basin additionally held an overlying right to the waters of the Basin, arising solely due to the fact that they overlie the Basin. Accordingly, any federal reserved right is subject to the property of all overlying rights existing at the time of the reservation, each of

1 which entitles the owner of such property to a correlative share of the Basin's supply. (*Katz v.*
2 *Walkinshaw* (1903) 141 Cal. 116.)

3 **III. CONCLUSION**

4 Based on the foregoing, AGWA requests that this Court confirm that any rights of Federal
5 Defendants to the Basin's groundwater are subject to the priority of overlying groundwater rights in
6 existence at the time of the vesting of Federal Defendants' rights.

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9 Dated: January 18, 2012

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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11 By: _____


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