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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding,
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

LASC Case No.: BC 325201

**ANTELOPE VALLEY
GROUNDWATER CASES**

Santa Clara Court Case No. 1-05-CV-049053
Assigned to the Hon. Jack Komar, Judge of
the Santa Clara Superior Court

**ANTELOPE VALLEY
WATERMASTER'S RESPONSE TO
MOTION TO APPROVE TRANSFER OF
WATER RIGHTS TO CRAIG VAN DAM**

AND ALL RELATED ACTIONS

Date: September 8, 2023
Time: 9:00 a.m.
Dept: CourtCall

I. INTRODUCTION:

The motion of Craig Van Dam ("Craig") requests that this Court do what the Antelope Valley Watermaster ("Watermaster") was unable to do—namely to approve an application to transfer water rights from High Desert Dairy, LLC ("HDD") to Craig. At its June 2023 meeting, the Watermaster Board rejected Craig's transfer application by a 3-2 vote (3 in favor, 1 abstention, and 1 recusal). Before the Board's vote, conflicting arguments were provided in writing to the Board by legal counsel for Craig and for Craig's brother, Gary Van Dam ("Gary"), as to the legal effect of various documents (including HDD's Operating Agreement) and the disputed legal effect of certain Corporations Code sections. Craig and Gary also presented

1 strikingly different versions of the relevant facts.

2 Craig's motion revolves around highly contested facts and law outside the scope of the
3 Watermaster Board's powers and duties under the December 23, 2015 Judgment and Physical
4 Solution in the Antelope Valley Groundwater Adjudication ("Judgment"). The Watermaster
5 Board determined that it could not unanimously render a decision in favor of Craig's transfer
6 application, and so it now falls to this Court, pursuant to its authority under Paragraphs 20.3-
7 20.3.5 of the Judgment, to decide which version of the facts and law controls, and whether
8 Craig's transfer application should be approved.

9 In short, this Court should render a decision after a hearing where the Court will "take
10 evidence and hear argument" (Judgment at ¶ 20.3.4) before it renders a decision in the dispute
11 between Craig and Gary.

12 **II. PROCEDURAL HISTORY:**

13 One of the fundamental benefits of being a Party to the Judgment is the ability to transfer
14 and receive water. Since it began reviewing and approving transfer applications in 2017, the
15 Watermaster has never encountered a situation in which one Party actually challenged the legal
16 right or standing of another Party to be involved in a transfer. Brothers Craig and Gary have
17 different views of the facts underlying Craig's transfer application, the relevance and
18 interpretation of the Operating Agreement for HDD, and the impact of certain sections of the
19 California Corporations Code. There seems, however, to be agreement about some basic facts,
20 including the following:

21 a. On September 23, 2022, Craig and his brother Dean Van Dam submitted to
22 the Watermaster a Transfer Request Form to transfer 500 acre feet (AF) of permanent
23 production rights from HDD to Craig. (Craig Van Dam Decl. at ¶ 9—all subsequent
24 references to "Van Dam Decl." shall mean and refer to the Declaration of Craig Van Dam
25 filed with Craig's Motion to Approve Transfer of Water Rights.)

26 b. On March 6, 2023, the Watermaster Engineer issued its report finding that
27 the transfer comported with the Judgment and finding that the potential for Material Injury
28 from the transfer was negligible. (Van Dam Decl. at ¶10, attaching a copy of the

1 Engineer's report as Exhibit F.)

2 c. On March 21, 2023, just hours before the March 22, 2023 Watermaster
3 Board meeting, Gary submitted to Craig Parton, Watermaster General Counsel, written
4 opposition to the transfer, threatening litigation should the transfer be approved by the
5 Watermaster at the March Board meeting, and claiming that any Watermaster approval of
6 such transfer would constitute fraud. (Van Dam Decl. at ¶ 11, attaching a copy of Gary's
7 March 21, 2023 letter as Exhibit G.)

8 d. On April 14, 2023, attorney Steven Derryberry, counsel for Craig Van
9 Dam, submitted a letter to Mr. Parton, challenging and contradicting the accuracy of many
10 of the facts alleged by Gary in his March 21, 2023 letter. (Van Dam Decl. at ¶ 12,
11 attaching a copy of Mr. Derryberry's April 14, 2023 letter as Exhibit H.)

12 e. On May 23, 2023 (just hours before the May Watermaster Board meeting
13 on May 24th), Richard Marcus, another counsel for Craig Van Dam, submitted an email to
14 Mr. Parton further challenging and contradicting the position taken by Gary. (Van Dam
15 Decl. at ¶ 13, attaching a copy of Mr. Marcus's May 23, 2023 email as Exhibit I.)

16 f. On June 27, 2023, the day before the June Watermaster Board meeting, Mr.
17 Parton received a six-page letter from Robert Saperstein, counsel for Gary, with attached
18 declarations from Gary and his mother, Gertrude Van Dam, in which Mr. Saperstein
19 challenged and contradicted many of the claims contained in the April 14, 2023 letter from
20 Mr. Derryberry and the May 23, 2023 email from Mr. Marcus, and urged that the
21 Watermaster Board take no action on Craig's transfer application. (Saperstein Decl. at ¶ 2,
22 attaching a copy of Mr. Saperstein's June 27, 2023 letter to Mr. Parton as Exhibit 1.)

23 **III. DISCUSSION:**

24 Craig Van Dam's application to approve a transfer of water rights was considered by the
25 Watermaster at its June Board meeting. This application had been pending for some months but
26 was subject to requests for a continuance on more than one occasion. Three Watermaster Board
27 members voted to approve Craig's transfer application, one Board member abstained, and one
28 Board member recused himself. Because any action by the Watermaster must be unanimous and

1 with all five Board members present (Judgment at ¶ 18.1.2.3), the Watermaster Board determined
2 that Craig's transfer application was not approved.

3 Paragraph 20.3 of the Judgment provides that "[a]ny action, decision, rule, regulation, or
4 procedure of [the] Watermaster ... pursuant to this Judgment shall be subject to review by the
5 Court on its own motion or on timely motion by any Party...." Craig's motion was timely filed
6 pursuant to Paragraph 20.3.3 of the Judgment, and the Watermaster's determination that the
7 transfer application was "not approved" as a result of the failure of two Board members to vote
8 "yes" constitutes a Watermaster "action, decision, rule, regulation, or procedure" that is
9 appealable to this Court pursuant to Paragraph 20.3 of the Judgment.

10 In his Opposition to Craig's Motion, Gary argues that Craig's transfer application is not
11 ripe for adjudication and therefore not properly before this Court. (*See* Opposition at 12:12 –
12 14:11.) To the contrary, the Watermaster Board collectively took action and/or made a decision
13 on Craig's transfer application, and further determined that the 3-1-1 vote resulted in the
14 application not being approved. The language at Paragraph 20.3 of the Judgment is broadly
15 defined to allow an aggrieved Party to appeal any Watermaster action or decision to this Court.

16 Pursuant to Paragraph 6.5 of the Judgment:

17 "The Court retains and reserves full jurisdiction, power and authority for the
18 purpose of enabling the Court, upon a motion of a Party or Parties ... to make such
19 further or supplemental order or directions as may be necessary or appropriate to
20 interpret, enforce, administer or carry out this Judgment and to provide for such
21 other matters as are not contemplated by this Judgment and which might occur in
22 the future, and which if not provided for would defeat the purpose of this
23 Judgment."

24 For the Court to refuse to consider the issue at hand as requested by Gary would leave an
25 allegedly aggrieved Party in a perpetual state of indecision, precluding any option to seek relief
26 from this Court in the event (as Gary characterizes it) the Watermaster takes no action when one
27 or more Board members recuse themselves or abstain from voting. This cannot be the result
28 intended by the Judgment. To the extent Gary disputes whether any Watermaster Board members

1 properly recused themselves or abstained from voting on Craig’s transfer application, those issues
2 are not properly before this Court for consideration.

3 Paragraph 20.3.4 of the Judgment provides that the Court shall conduct a hearing at which
4 it will “take evidence and hear argument.” Pursuant to Paragraph 20.3.4 of the Judgment, “[t]he
5 Court’s review shall be *de novo* and the Watermaster’s decision or action shall have no
6 evidentiary weight in such proceeding.” Craig’s motion is properly scheduled to be heard by this
7 Court, which review will be *de novo* upon taking evidence and hearing argument on Craig’s
8 motion, all in compliance with the Judgment.

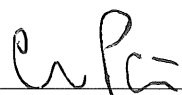
9 **IV. CONCLUSION:**

10 The Watermaster takes no sides in this current dispute between Craig and Gary, and will
11 comply with any order or directive that might result from the hearing on Craig’s motion.

12 Respectfully submitted,

13 Dated: August 29, 2023

PRICE, POSTEL & PARMA LLP

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15 By: 
16 CRAIG A. PARTON
17 CAMERON GOODMAN
18 Attorneys for
19 Antelope Valley Watermaster
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I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 200 East Carrillo Street, Fourth Floor, Santa Barbara, California 93101.

On August 29, 2023, I served the foregoing document described as **ANTELOPE VALLEY WATERMASTER'S RESPONSE TO MOTION TO APPROVE TRANSFER OF WATER RIGHTS TO CRAIG VAN DAM** on all interested parties in this action by placing the original and/or true copy.

Executed on August 29, 2023, at Santa Barbara, California.

PRICE, POSTEL
& PARMA LLP—
SANTA BARBARA, CA