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

11 ANTELOPE VALLEY	)	Judicial Council Coordination Proceeding No.
GROUNDWATER CASES:	)	4408
Los Angeles County Waterworks District No.)	
12 40 v. Diamond Farming Co.	)	Santa Clara Case No. 1-05-CV-049053
Superior Court of California	)	Assigned to The Honorable Jack Komar
13 County of Los Angeles, Case No. BC 325 201)	
	)	TEJON RANCHCORP'S BRIEF RE:
14 Los Angeles County Waterworks District No.	)	JUDGE'S REQUEST FOR CLARIFICATION
15 40 v. Diamond Farming Co.	)	RE: CONTINUING JURISDICTION, NEW
Superior Court of California, County of Kern,	)	PARTIES, CLAIMS AND CHANGED
16 Case No. S-1500-CV-254-348	)	CONDITIONS
)	
17 Wm. Bolthouse Farms, Inc. v. City of	)	Trial Date: October 10, 2006
18 Lancaster	)	Time: 10:00 a.m.
Diamond Farming Co. v. City of Lancaster	)	Department: 1
19 Diamond Farming Co. v. Palmdale Water)	
Dist.)	
20 Superior Court of California, County of)	
Riverside, consolidated actions, Case Nos.)	
21 RIC 353 840, RIC 344 436, RIC 344 668)	
)	

1 **I. INTRODUCTION.**

2 This brief responds to the Honorable Jack Komar's request for a brief addressing
3 the impact of continuing jurisdiction, new parties, claims and changed conditions on this action.
4 This brief discusses how various groundwater judgments throughout California have
5 addressed these issues in prior proceedings.

6 **II. PHYSICAL SOLUTION.**

7 The physical solution is a remedy employed in water rights litigation that enables
8 the court to order a practical, flexible solution that maximizes the reasonable beneficial use of
9 available waters to all parties, and allows for a single court to comprehensively and
10 consistently address changed conditions and new claims. (*Montecito Valley Water Co. v.*
11 *Santa Barbara* (1904) 144 Cal. 578, 592). A physical solution involves the application of
12 general equitable principles to "achieve practical allocation of water to competing interests so
13 that a reasonable accommodation of demands upon a water source can be achieved."
14 (*Imperial Irrigation District v. State Water Resources Control Board* (1990) 225 Cal.App.3d
15 548, 572).

16 The physical solution doctrine originally emerged in California as a response to
17 concerns that traditional remedies for water rights infringement were too harsh; traditional
18 remedies typically involved an injunction prohibiting continued use of subordinate water claims.
19 (*City of Lodi v. East Bay Municipal Water District* (1936) 7 Cal.2d 316, 337). Courts were
20 reluctant to prohibit a party's continued access to water resources when a less drastic remedy
21 was available. (*Montecito Valley Water Co. v. Santa Barbara, supra*, 144 Cal. 578, 592).

22 With the addition of the 1928 amendment to the California Constitution, now
23 Article X, Section 2, courts must consider physical solutions in water rights cases:

24 "Since the adoption of the 1928 constitutional amendment, it is not
25 only within the power but it is also the duty of the trial court to admit
26 evidence relating to possible physical solutions, and if none is
27 satisfactory to it to suggest on its own motion such physical
28 solution." (*City of Lodi v. East Bay Municipal Utility District, supra*,
7 Cal.2d 316, 341).

1 In complex groundwater adjudications over the past few decades, many of which
2 involve large areas with dozens of parties, the doctrine of physical solution has been employed
3 in the judgments reached by the trial court. (*City of Los Angeles v. City of San Fernando, et al.*
4 (*Superior Court, Los Angeles County, 1979, No. 650079*) ("San Fernando Basin Judgment");
5 *Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al.* (*Superior Ct. Los*
6 *Angeles County, 1972 (amended 1989), No. 924128*) ("San Gabriel Basin Judgment"); *Chino*
7 *Basin Municipal Water District v. City of Chino, et al.* (*Superior Ct. San Bernardino County,*
8 *1978, No. RCV 51010, formerly No. 164327*) ("Chino Basin Judgment"); *City of Barstow, et al.,*
9 *v. City of Adelanto, et al.* (*Superior Ct. Riverside County, 1996, No. 208568*) ("Mojave Basin
10 Judgment"); *City of Pasadena v. City of Alhambra* (*Superior Ct. Los Angeles County, 1984*
11 *(modified and restated), No. Pasadena C-1323*) ("Raymond Basin Judgment").¹

12 In each of these cases, pumpers were required to reduce their production of
13 native groundwater. However, practical solutions were reached under the physical solution
14 doctrine to mitigate the impact of such reductions, address changed conditions, maximize the
15 number of users, avoid waste, and provide for maximum beneficial use of available water.

16 **III. CONTINUING JURISDICTION AND WATERMASTERS.**

17 Under the physical solution entered in most groundwater judgments, the courts
18 reserve continuing jurisdiction to address future changed conditions and ensure that the
19 Basin's groundwater supplies are fully utilized to the maximum extent possible pursuant to Cal.
20 Const. Art. X, Sec. 2.

21 Courts regularly affirm the expansive retention of jurisdiction in cases involving
22 water rights. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 937). As the
23 California Supreme Court explained in *City of Los Angeles v. City of Glendale* (1943) 23
24 Cal.2d 68, 81:

25 "[t]he retention of jurisdiction to meet future problems is regarded
26 as an appropriate exercise of equitable jurisdiction in litigation over

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28 ¹ Relevant excerpts of the San Fernando Basin, San Gabriel Basin, Chino Basin, Mojave Basin and Raymond
Basin Judgments are attached, as Exhibits "A" – "E," respectively, to Tejon Ranchcorp's Request For Judicial
Notice ("RFJN"), filed concurrently herewith.

1 water rights, particularly when the adjustment of substantial public
2 interests is involved.”²

3 By retaining broad continuing jurisdiction, a single court can oversee a
4 comprehensive, thoughtful, efficient and consistent review of related matters. This also
5 enables the court to comprehensively and consistently address changed conditions affecting
6 interested parties including, *inter alia*, safe yield variations, hydrologic balance issues, water
7 quality, new claims, and new parties. It enables the court to determine, on a case-by-case
8 basis, whether and to what extent, new or changed uses are reasonable and beneficial.

9 It further enables the court to consider the impact of new or changed conditions
10 on existing rights and make corresponding adjustments. As stated by the California Supreme
11 Court in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 287: “Moreover,
12 since the trial court retained jurisdiction, it has the power to redetermine safe yield in
13 accordance with changed hydrologic condition, if necessary, either on remand or in the future.”

14 The reservation of continuing jurisdiction is a common feature in groundwater
15 judgments throughout California.³ As part of the court’s retention of continuing jurisdiction,
16 Courts often appoint Watermasters to: (1) assist the Court in the ongoing administration and
17 enforcement of the Judgment, and (2) help the Court in managing the resource for the benefit
18 of the Basin and water right holders. This includes power of the Watermaster to: (1) petition
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21 ² *Central and West Basin Water Replenishment Dist. v. Southern California Water Company* (2003) 109 Cal.
22 App. 4th 891, 903 (“Courts regularly affirm the expansive retention of jurisdiction in cases involving water rights.
23 (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 937, *City of L. A. v. City of Glendale* (1943) 23
24 Cal.2d 68, 81). ‘The retention of jurisdiction to meet future problems is regarded as an appropriate exercise of
25 equitable jurisdiction in litigation over water rights, particularly when the adjustment of substantial public interests
26 is involved.’ (*City of L. A. v. City of Glendale, supra*, 23 Cal.2d at p. 81). That is exactly what happened here; the
27 Judgment reserved jurisdiction to meet future problems and adapt to changed circumstances. Specifically, the
28 court reserved jurisdiction ‘[t]o provide for such other matters as are not contemplated by the judgment and which
might occur in the future, and which if not provided for would defeat any or all of the purposes of this judgment to
assure a balanced Central Basin subject to the requirements of Central Basin Area for water required for its
needs, growth and development.”)

³ See also CCP Section 664.6 (“If parties to pending litigation stipulate, in a writing signed by the parties outside
the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon
motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may
retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the
settlement.” Emphasis added.)

1 the Court for further or supplemental orders, and (2) modify, amend or amplify provisions of the
2 Judgment. These procedures enable the existing judgment to be utilized to conform to
3 changed conditions as necessary and consistent with Cal. Const. Art. X, Sec 2. For example,
4 paragraph 7.1 of the trial court's judgment entered in *City of Los Angeles v. City of San*
5 *Fernando, supra*, 14 Cal.3d 199, provides:

6 "Full jurisdiction, power and authority are retained by and reserved
7 to the Court for purposes of enabling the Court upon application of
8 any party or of the Watermaster by motion and upon at least 30
9 days' notice thereof, and after hearing thereon, to make such
10 further or supplemental orders or directions as may be necessary
or appropriate, for interpretation, enforcement or carrying out of this
Judgment, and to modify, amend or amplify any of the provisions of
the Judgment or to add to the provisions thereof consistent with the
rights herein decreed. . . ." (RFJN, Exhibit "A").

11 Paragraph XXII of the Raymond Basin Judgment provides:

12 "The Court hereby reserves jurisdiction and authority at any time,
13 upon application of any party, the Watermaster, or upon its own
14 motion, to make such modifications of, or such additions to, the
15 provisions of this Judgment, or to make such further order or
16 orders, as may be necessary or desirable for the adequate
17 enforcement, protection or preservation of the rights of the
18 respective parties as declared in this Judgment or as provided in
said Agreement and amendment thereto. The Court further
reserves jurisdiction to make any other and/or additional orders of
sufficient kind and nature to protect the waters in said Raymond
Basin Area or any portion thereof from contamination of the
groundwater supply from cesspool effluent or surface waters."
(RFJN, Exhibit "E").

19 There is substantial authority supporting the use of a court-appointed
20 Watermaster to assist the court in the exercise of its continuing jurisdiction to address changed
21 conditions. Watermasters can file motions and seek Orders to Show Cause in the existing
22 action against parties and their successors-in-interest who produce groundwater in
23 contravention of the Judgment. Pursuant to the Judgment in *City of Los Angeles v. City of San*
24 *Fernando, et al., supra*, 14 Cal.3d 199, the court under its continuing jurisdiction entered
25 orders enjoining successors-in-interest from producing water upon a motion brought by the
26 Watermaster. (RFJN, Exhibits "F" – "G").

27 The decisions of other courts support this result. In *McKinley Brothers v.*
28 *McCauley* (1932) 215 Cal. 229, an injunction entered in 1886 to perpetually enjoin

1 interference with plaintiff's right in a stream was enforced 46 years later against the
2 successors in interest of the defendants. In *Adams v. Barber* (1913) 21 Cal.App. 503, the
3 court also enforced an injunction entered against the successors in interest to the defendant.

4 The court stated:

5 "By that judgment the superior rights of the original grantors of the
6 plaintiffs to all the water of said creek . . . were conclusively
7 established, and by that judgment Freeman, the defendant in the
8 action in which it was entered, and his privies or successors in
9 interest by title subsequent to the commencement of said action are
10 bound and estopped in this action from asserting any right to any of
11 the water flowing in said creek based upon any claim alleged to
12 have existed anterior to the entry of said judgment." (*Id.* at 513-
13 514.)

14 Indeed, the trial court has inherent authority to modify an injunction where there
15 are changed conditions, or where the modification is necessary to serve the ends of justice.

16 As stated by the court in *Mendly v. County of Los Angeles* (1994) 23 Cal.App.4th 1193, 1207:

17 "It is settled that where there has been a change in the controlling
18 facts upon which a permanent injunction was granted, or the law
19 has been changed, modified or extended, or where the ends of
20 justice would be served by modification or dissolution, the court has
21 the inherent power to vacate or modify an injunction where the
22 circumstances and situation of the parties have so changed as to
23 render such action just and equitable. This principle governs even
24 though the judgment providing the injunctive relief is predicated
25 upon stipulation of the parties."⁴

26 The reservation of continuing jurisdiction has become a common tool to minimize
27 costs, expenses and conflicting rulings that would otherwise develop from piecemeal water
28 rights litigation. It allows a court to deal with changed conditions affecting previously
adjudicated rights without the filing of entirely new actions.

29 **IV. NEW PARTIES.**

30 Typically superior court litigation binds only those parties to the proceeding. In
31 the water rights context, courts recognize that practical considerations require equitable

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1 solutions that sometimes require the joinder of less than all parties. In *Pasadena v. Alhambra*,
2 (1949) 33 Cal. 2d 908, 919-920, the court stated:

3 "The objection is also made that the court erred in allocating water
4 without the joinder of a number of private users who pumped
5 comparatively small amounts. The referee filed a preliminary report
6 which stated that it would be impracticable to attempt to include all
7 such parties. It recommended, however, that certain named parties
8 who used fairly substantial amounts be joined in the action, and the
9 court ordered them brought in over the objections of appellant. No
10 request was made by appellant for the inclusion of any party who
11 had not been joined, and there is no showing that its interest was
12 injuriously affected by the failure to require the joinder of all
13 possible claimants. (See *Smith v. Cucamonga Water Co.*, 160 Cal.
14 611, 617). **The line must be drawn somewhere in order to bring
15 the proceeding within practical bounds, and it would have
16 been impossible to reach a solution of the problems involved
17 and to render a valid judgment if jurisdiction to make an
18 allocation depended upon the joinder of every person having
19 some actual or potential right to the water in the basin and its
20 sources of supply. The persons not made parties are, of
21 course, not bound by the judgment, nor are they injured by the
22 injunction.** (*Id.*; emphasis added).

23 The physical solution doctrine, the court's exercise of continuing jurisdiction, and
24 the court's appointment of a Watermaster, enable the court to accommodate new conditions,
25 claims and parties without disrupting the prior Stipulation or Judgment.

26 Judgments may provide for nonparties to subsequently join or intervene in the
27 existing action. As a practical matter, experience has shown that a nonparty is far less likely to
28 engage in the expense of an entirely separate action when an existing judgment allows for an
expedited process whereby that party can obtain the benefits of a Judgment by simple
intervention.

Section 57 of the Judgment entered in the Main San Gabriel Basin allows
nonparties to become parties to the Judgment by executing a Stipulation for Intervention with
Watermaster. Due process concerns are addressed by including this provision in the
Judgment and requiring approval by Watermaster and the Court. After the Stipulation is
approved, the party is bound by the terms and conditions of the Judgment and entitled to the
rights and privileges accorded under the Judgment's physical solution provisions. Paragraph
57 of the Main San Gabriel Basin Judgment provides:

1 "Any person who is not a party or successor to a party and who
2 proposes to Produce water from the Basin or Relevant Watershed,
3 may seek to become a party to this Judgment through a Stipulation
4 For Intervention entered into with Watermaster. Watermaster may
5 execute said Stipulation on behalf of the other parties herein but
6 such Stipulation shall not preclude a party from opposing such
7 Intervention at the time of the Court hearing thereon. Said
8 Stipulation For Intervention must thereupon be filed with the Court,
9 which will consider an order confirming said Intervention following
10 thirty (30) days' notice to the parties. Thereafter, if approved by the
11 Court, such Intervenor shall be a party bound by this Judgment and
12 entitled to the rights and privileges accorded under the Physical
13 Solution herein." (RFJN, Exhibit "B").

14 Paragraph 40 of the judgment entered in the Mojave Groundwater Basin contains
15 a substantially identical provision. (RFJN, Exhibit "D"). Similarly, paragraph 60 of the
16 Judgment entered in the Chino Groundwater Basin provides:

17 "Any non-party assignee of the adjudicated appropriative rights of
18 any appropriator, or any other person newly proposing to produce
19 water from Chino Basin, may become a party to this judgment upon
20 filing a petition in intervention. Said intervention must be confirmed
21 by order of this Court. Such intervenor shall thereafter be a party
22 bound by this judgment and entitled to the rights and privileges
23 accorded under the Physical Solution herein, through the pool to
24 which the Court shall assign such intervenor." (RFJN, Exhibit "C").

25 The physical solution may authorize the Watermaster to sue non-parties to
26 protect rights decreed under the Judgment, support the Judgment, and support the physical
27 solution. This is consistent with the law as applied to other court-appointed agents, such as
28 receivers. For example, receivers are court-appointed agents authorized to initiate litigation as
a party. The court in *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, held that a court-
appointed receiver has a right to initiate litigation notwithstanding the challenge of a petitioner
alleging the receiver's lack of capacity to file the complaint and summons. The court in
Klopstock stated:

29 "The plaintiff was duly appointed receiver and has legal capacity to
30 sue as such and, hence could bring the defendants into court by
31 the service of summons upon them even if he had no cause of
32 action against them." (*Id.* at 18).

33 As a court-appointed entity, the Watermaster may also sue non-parties that
34 interfere with the exercise of rights granted under the Judgment. In *Main San Gabriel Basin*
35 *Watermaster v. Azusa Land Reclamation Company* (1993) 12 Cal.App.4th 1371, a landfill's

1 operations polluted the local water supply. To protect adjudicated resources within the
2 groundwater basin, the court-appointed Watermaster initiated litigation to protect against
3 degradation and contamination of the groundwater supply.

4 Provisions may be included in the Judgment that authorize Watermaster to bring
5 an action or motion to enjoin production in contravention of the Judgment. Paragraph 12 of the
6 Judgment entered in the Mojave Groundwater Basin provides:

7 "This Judgment, and the Physical Solution decreed herein,
8 addresses all Production within the Mojave Basin Area. Because of
9 the existence of Overdraft, any Production outside the framework of
10 this Judgment and Physical Solution will contribute to an increased
11 Overdraft, potentially damage the Mojave Basin Area and public
12 interests in the Basin Area, injure the rights of all Parties, and
13 interfere with the Physical Solution. Watermaster shall bring an
14 action or a motion to enjoin any Production that is not pursuant to
15 the terms of this Judgment." (RFJN, Exhibit "D").

16 In addition, trial courts may take advantage of the "related cases" provisions,
17 such as those found at Los Angeles Superior Court Local Rule 7.3. This Local Rule empowers
18 a trial court to order cases related, even if the prior case has been dismissed. Under this
19 provision, a future action involving a new defendant could be transferred to the judge presiding
20 over the groundwater adjudication under his or her continuing jurisdiction. Local Rule 7.3(f)(1)
21 provides:

22 "A civil case may be ordered related to other case(s), including
23 Probate and Domestic (Family Law) cases, by the court when it
24 appears that the cases:

- 25 a) Arise from the same or substantially identical transactions,
26 happenings or events; or
- 27 b) Require a determination of the same or substantially identical
28 questions of law and/or fact; or
- 29 c) Are likely for other good reasons to require substantial
30 duplication of labor if heard by different judges.
- 31 d) Are the same or substantially similar to a prior case in the
32 Superior Court that has been dismissed, either with or without
33 prejudice."

34 Thus, even if new claims arise against new users of surface or groundwater, the
35 court and watermaster can address them under the court's continuing jurisdiction.

1 **V. CONCLUSION.**

2 The physical solution doctrine and the court's reservation of continuing
3 jurisdiction have enabled judgments to evolve over time, add new parties, and address
4 changed conditions. With the assistance of court-appointed Watermasters, courts with
5 responsibility for groundwater judgments throughout California have addressed these issues in
6 a comprehensive, efficient and consistent manner within the context of the court's continuing
7 jurisdiction.

8 Dated: October 6, 2006

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