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14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
17

18 **ANTELOPE VALLEY**
GROUNDWATER CASES
19
20 Included Actions:
Los Angeles County Waterworks District
21 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;
22
23 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
24 No. S-1500-CV-254-348;
25
26 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
27 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
28 RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408
CLASS ACTION
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

**PUBLIC WATER SUPPLIERS’
OPPOSITION TO AGWA’S MOTION IN
LIMINE NO. 1**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The self-proclaimed “Antelope Valley Ground Water Agreement Association”
4 (“AGWA”) asks the court to define the terms “overdraft” and “safe yield”—terms that have
5 already been defined by the California Supreme Court—and to exclude evidence based on
6 AGWA’s definitions and proposed interpretations. In the Phase III trial, this court will determine
7 whether the Basin is in *overdraft* and the *safe yield* of the Basin. Adopting AGWA’s new
8 definitions, however, could prevent this court from considering evidence essential to a resolution
9 of these factual issues and is thus inappropriate for a motion in limine.

10 Moreover, AGWA’s proposed definitions are inconsistent with legal precedent. Judicial
11 interpretation of “overdraft” and “safe yield” has been clarified during decades of litigation
12 preceding this trial. This court is familiar with case law defining “overdraft” and “safe yield”
13 and thus, there is no need for a special evidentiary ruling. For the reasons that follow, the motion
14 be denied.

15 II. ARGUMENT

16 A. A Showing Of Harm Is Not A Condition Precedent To A Finding Of
17 Overdraft And Evidence Should Not Be Excluded On This Basis

18 AGWA erroneously contends that a finding of overdraft requires *a*
19 *showing of harm* to the basin resulting from pumping in excess of
20 the Basin’s safe yield. (Motion in *Limine* No. 1 at 3:27, 4:1-4.)
21 The law contains no such requirement. Indeed, the California
22 Supreme Court rejected this same contention in *Pasadena v.*
23 *Alhambra* some sixty years ago: [T]he proper time to act in
24 preserving the supply **is when the overdraft commences** . . . the
25 aid of the courts would come too late and be entirely inadequate if,
26 as appellant seems to suggest, those who possess water rights could
27 not commence legal proceedings until the supply was so greatly
28 depleted that it actually became difficult or impossible to obtain
water. (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 939
[emphasis added].)

AGWA’s new proposed definition of overdraft is contrary to the *Pasadena* case, and is at
variance with long-standing precedent. As this court is aware, overdraft occurs when water
pumped from a groundwater basin increases to the point where there is no surplus water. (*See,*

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1 e.g., *Los Angeles v. San Fernando* (1975) 14 Cal. 3d 199, 278 [“[o]verdraft commences whenever
2 extractions increase, or the withdrawable maximum decreases, or both, to the point where the
3 surplus ends.”].) A court must act when overdraft begins, and “limit the total use by all
4 consumers . . . to enjoin takings in such quantities or in such a manner *as would destroy or*
5 *endanger the underground source of water.*” (*Pasadena, supra*, 33 Cal.2d at 939 [emphasis
6 added].) AGWA would rewriting water law and, impose a new requirement, “harm,” that would
7 allow groundwater supplies to be exhausted before remedial action could occur. This is precisely
8 the situation *Pasadena* court warned against and sought to avoid.

9 **B. AGWA’s New Definition Of Safe Yield Mischaracterizes Case Law And**
10 **Would Unjustifiably Exclude Relevant Evidence From Consideration**
11 **During Phase III**

12 AGWA misrepresents the meaning of “safe yield,” defining it as the maximum quantity
13 of water that may be withdrawn annually without causing harm to the Basin. (Motion in Limine
14 No. 1 at 4:5-11, 4:19-21.) As articulated in *Los Angeles v. San Fernando*, safe yield is “the
15 maximum quantity of water which can be withdrawn annually from a ground water supply under
16 a given set of conditions without causing an undesirable result.” (*Los Angeles v. San Fernando*
17 (1975) 14 Cal.3d 199, 278.) The court further explained, however, that the phrase “undesirable
18 result” referred “to a *gradual* lowering of the ground water levels resulting eventually in
19 depletion of the supply.” (*Ibid.* [emphasis added].) Stated simply, safe yield encompasses the
20 cumulative effect that pumping has on a basin over an extended period. Indeed, the gradual
21 depletion of water from the basin will be injurious to water right holders over time. (*See, e.g.,*
22 *Pasadena, supra*, 33 Cal.2d at 939.) Nowhere has a court decided that a showing of harm is
23 required before a court may act to protect water rights holders in a basin from a depletion of the
24 ground water resource.

25 **C. A Motion In Limine Is An Inappropriate Vehicle For Pretrial**
26 **Determinations of Questions Of Law And Fact**

27 AGWA improperly asks this court to make pre-trial legal determinations regarding
28 overdraft and safe yield, but a motion in limine is not the appropriate motion for the request. Pre-
trial legal determinations should be made by motions for judgment on the pleadings or by

1 summary adjudication. In the latter, AGWA would have had to demonstrate no triable factual
2 issue exists, and AGWA has made no such showing in its motion in limine.

3 Phase III involves factual determinations as to whether the basin is in overdraft and the
4 amount of safe yield —factual issues not appropriately decided in a motion in limine. If the
5 motion were to be granted, the court would be compelled to exclude evidence relevant to the
6 resolution of these factual issues. Instead, the court should have the benefit of all of the evidence
7 presented at trial to make overdraft and safe yield findings. Evidence sought to be introduced that
8 is irrelevant to those factual determinations can be excluded at trial upon proper objection.

9 AGWA does not provide any proper factual basis as to why such evidence should be
10 excluded, apart from an unpersuasive claim of judicial economy, nor does it describe what
11 evidence should be disallowed. Motions in limine devoid of factual support would force a court
12 to rule on evidentiary issues in a vacuum, and must be dismissed. (*Kelly v. New West Fed. Sav.*
13 (1996) 49 Cal.App.4th 659, 670.) Moreover, the terms “overdraft” and “safe yield” are defined
14 by case law. Thus, the motion improperly seeks a ruling that is merely declaratory of existing
15 law, and such motions are improper. (*Ibid.*) Therefore, the motion should be denied.

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III. CONCLUSION

The court is well-versed in the case law defining overdraft and safe yield and it can apply this law to determine the issues before it during the Phase III trial, without the need of a special ruling on a motion in limine. For all the reasons set forth above, the motion be denied.

Dated: December 14, 2010

BEST BEST & KRIEGER LLP

By 

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PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On December 14, 2010, I served the within document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO AGWA'S MOTION IN LIMINE
NO. 1**

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 14, 2010, at Irvine, California.


Kerry V. Keefe