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

17 **ANTELOPE VALLEY**
GROUNDWATER CASES

18 Included Actions:
19 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
20 Court of California, County of Los
Angeles, Case No. BC 325201;

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

24 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
25 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
26 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
27
28

Judicial Council Coordination No. 4408

CLASS ACTION

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

**REPLY RE MOTION FOR LEGAL
FINDINGS ON WATER CODE
REQUIREMENT TO REPORT
EXTRACTIONS OF GROUNDWATER IN
LOS ANGELES COUNTY**

REPLY

I. INTRODUCTION

No matter how many parties argue against Water Code section 4999 *et seq.*, there is a statutory requirement for parties in Los Angeles County to report their respective groundwater extractions exceeding 25 afy. Under Water Code section 5004, a party's failure to comply with the reporting requirement "shall be deemed equivalent for all purposes to non use for such year of any groundwater. . . ."

Several parties misread Los Angeles County Waterworks District No. 40's motion. The motion does not seek a forfeiture of any party's water rights, it merely asks for a legal determination on Water Code section 4999 *et seq.*

The Motion does not seek an advisory opinion. Water Code section 4999 provides that in Los Angeles and there other Southern California counties, that the "dependence on ground water supplies , which prevails in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura, together with the fact that most such underground water supplies are overdrawn, it is necessary that the provisions of this part [Water Code sections 4999 *et seq*] apply to said counties only." In order for the Water Code sections to "apply," the court has to enforce them. There is a long-standing and costly existing dispute amongst the parties regarding the right to use groundwater in the Basin and the Water Code sections "apply" to the present dispute.

**II. WATER CODE SECTION 5004 APPLIES TO ALL PARTIES WHO
EXTRACTED MORE THAN 25 AFY IN LOS ANGELES COUNTY**

A few parties erroneously contend Water Code Section 5004 somehow applies only to groundwater appropriators seeking prescriptive rights. (City of Lancaster Opposition at p. 1, ln. 17-19; Van Dam Opposition at p. 2, ln. 14-18; Los Angeles County Sanitation Districts Nos. 14 and 20 Opposition at p. 3, ln. 3-7; State of California Opposition, p. 4, ln. 3-10.) Their contention is wrong for several reasons.

First, applicable definitions in Water Code Section 5000 define "Person" as "all persons

1 whether natural or artificial, including the United States of America, the State of California , and
2 all political subdivisions, districts, municipalities and public agencies of or in either the State or
3 the United States.” There is no statutory language that restricts the Water Code sections to
4 appropriators seeking prescriptive rights.

5 Additionally, Water Code section 5004, entitled “Failure to file notice; equivalent of
6 nonuse” states :

7 After the year 1959, failure to file with the board a notice for any
8 calendar year within six months after the close of such calendar
9 year shall be deemed equivalent for all purposes to nonuse for such
10 year of any ground water within the four counties by each person
11 failing to so file a notice within said period; provided, this section
and Section 5003 shall not apply to any person whose aggregate
extractions of ground water in any year does not exceed 25 acre feet
nor to any exactions of ground water with respect to which no
notice is required to be filed under this part. (emphasis added.)

12 The statutory language is clear that Section 5004 applies to each “person” defined in Section
13 5000, subdivision (d), and provides only two exceptions, neither of which limit Section 5004 to
14 appropriators seeking prescriptive rights.

15 Some parties selectively reference text from a book, California Water Law and Policy, for
16 their argument that the Water Code section 4999 et seq requirements apply only to appropriators
17 trying to obtain prescriptive rights. (E.g., Van Dam Opposition, p. 3, ln 11-26.) Their reliance is
18 misplaced because California Water Law and Policy states “[i]n addition to precluding the
19 acquisition of prescriptive rights, after 1959 a ground-water user who fails to file the appropriate
20 notice with the SWRCB within six months of the close of the calendar year shall be deemed to
21 have engaged in nonuse of the supply. (California Water Law and Policy, Slater, Section 11.12,
22 p. 11-53, citing Water Code section 5004.)

23 Finally, some parties mistakenly focus on Section 5003 while ignoring 5004. Section
24 5003 provides no prescriptive right shall accrue to any person for the time period for which
25 required reports were not timely filed. Section 5004 provides that the failure of any person to
26 submit required reports shall be deemed the non use of groundwater for the time period for which
27 required reports were not timely filed. Nothing in Section 5003 limits the application of Section
28 5004.

1 **III. THE MOTION DOES NOT REQUIRE A FORFEITURE OF A WATER RIGHT**

2 Several parties mistakenly claim the District's Motion seeks a forfeiture of water rights for
3 a party's failure to comply with reporting requirement in Water Code section 5001. Their claims
4 are wrong because the Motion does not seek forfeiture of any person's groundwater rights.
5 Instead, the Motion asks the Court to determine a party's failure to file the required notice to be
6 deemed as non use of water for the reporting year under Water Code section 5004.

7 **IV. THE WATER CODE'S REPORTING REQUIREMENTS ARE NOT ADVISORY**
8 **BUT APPLY TO PARTIES EXTRACTING MORE THAN 25 AFY.**

9 Several parties argue the Water Code reporting requirements are not ripe for
10 determination. The arguments are frivolous because the parties have a present controversy over
11 the Water Code reporting requirements. There is a need to resolve the dispute now because the
12 Antelope Valley Adjudication Area ("Basin") is in a state of overdraft and the parties must
13 properly allocate the safe yield of the Basin.¹ To properly allocate the safe yield by settlement or
14 by court proceedings, the existing dispute of the Water Code reporting requirements needs to be
15 resolved as soon as possible.

16 After many years of litigation and more than 8 months of mediation with Justice Robie, it
17 is extremely unlikely that all parties will reach an agreement on how to allocate the safe yield.
18 Thus, it is necessary for the Court to make a ruling on the Water Code reporting requirements
19 now to facilitate settlement as for further court proceedings on the allocation of the Basin's
20 groundwater supply.

21
22 **V. SECTION 5005 IS NOT INCONSISTENT WITH A PARTY'S LEGALLY-**
23 **DEEMED NON USE OF GROUNDWATER UNDER SECTION 5004**

24 Section 5005 provides:

25 Except as specified in Section 5004, failure to file the notice or
26 delay in filing the same shall not cause the loss of right to ground
27 water that existed on January 1, 1956.

28 ¹ The Court found that "current extraction of water from the aquifer by all pumping ranges from 130,000 to 150,000
acre feet a year, but in any event, is in excess of average annual recharge." (Statement of Decision, p. 7, ln. 24-26.)

1 Section 5005 is consistent with Water Code section 5004 and simply recognizes rights before the
2 Legislature enacted Water Code section 4999 *set seq.* Some parties, however, would try to
3 convince the Court that Section 5004 is contrary to a non use determination because overlying
4 groundwater rights existed at the time of statehood. This argument fails to consider whether
5 overlying rights were properly exercised, or whether the water was put to a reasonable and
6 beneficial use before the statutes' enactment. Furthermore, a plain reading of the Section 5005
7 entirely refutes this argument because the Section 5005 acknowledges the exceptions in Section
8 5004, none of which include an exception for overlying rights.

9 **V. WATER CODE SECTION 5007**

10 Some parties claim Section 5007 somehow stops a groundwater notice from being used as
11 evidence of a party's groundwater use. Water Code section 5007, however, states:

12 Any person may apply to the board to investigate the facts stated in
13 any specified notice so filed and to state in writing its determination
14 of the facts found any it upon such investigation. The cost of such
15 investigation and determination shall be paid by such applicant by
16 such deposits or in such payments as may be fixed by the board. In
17 the event the board makes a determination which differs in any
18 material respect from the facts contained in the notice, then, prior to
19 making its final determination, the board shall notify both the
20 person filing said notice and the person requesting a determination
21 of facts of its proposed findings, and shall invite either party to
22 submit further information prior to making its final determination,
23 and no such final determination shall be made until sixty (60) days
24 after the parties have been so notified of the board's proposed
25 determination.

26 In any action or proceeding hereafter pending in which the facts, or
27 any of them, contained in the notices so filed are material, such
28 notices shall not be evidence of any fact state therein, but such
determination by the board shall be prima facie evidence of said
facts. (Emphasis added.)

Preliminarily, it is important to note that Section 5007 does not provide that a party's failure to
report required groundwater extractions is not admissible in any action or proceeding where a
party's use of groundwater is at issue. Indeed, such an interpretation would lead to absurd results
by having Water Code reporting requirements and deemed non use of groundwater for failure to
comply with the reporting requirements but not allow a party's failure to comply with the
reporting requirement be in evidence in an action or proceedings to determine the party's use of

1 groundwater.

2 Instead, Section 5007 contemplates a person files a notice but another person requests an
3 investigation by State Water Resources Control Board. After the investigation and determination
4 by the Board, the notice is no longer evidence of the facts but rather the Board's findings are
5 *prima facie* evidence.

6 Additionally, Water Code sections 5006 and 5008 together provide that the notices are
7 evidence. Section 5006 requires that each notice be sworn to and Section 5008 makes a willful
8 notice misstatement a misdemeanor, punishable by a fine not to exceed one thousand dollars or
9 by imprisonment in the county jail not to exceed six months, or both.

10
11 **VII. SECTION 5001 IS MANDATORY**

12 Without proper citation to applicable law, some parties argue that Section 5001 does not
13 provide all the groundwater reporting requirement exceptions. Section 5001 is mandatory not
14 permissive and there are only three exceptions to the reporting requirements. If the Legislature
15 had intended to allow for further exceptions it would have done so.

16 **VIII. CONCLUSION**

17 No matter who or how many parties claim otherwise, there are reporting requirements and
18 deemed non use of groundwater under Water Code section 4999 *et seq.* The District respectfully
19 requests that the Court make legal determinations on the following issues:

20 1. Does Water Code section 4,999 *et seq* require a party extracting more than 25 afy in Los
21 Angeles County to file an annual notice with the State Water Resource Control Board?

22
23 2. If the answer to Question Number 1 is yes, is a party's failure to file the notice deemed a
24 party's non use of water under Water Code sections 5003 5004 for the required reporting time
25 period?

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27 ///

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1 3. For each party who files a notice, is the stated amount of ground water extraction deemed
2 to be the party use of groundwater for that reporting year?

3
4 Dated: February 6, 2012

BEST BEST & KRIEGER LLP

5
6 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 February 6, 2012, I served the within document(s):

**REPLY RE MOTION FOR LEGAL FINDINGS ON WATER CODE REQUIREMENT
TO REPORT EXTRACTIONS OF GROUNDWATER IN LOS ANGELES COUNTY**

- ☒ 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 February 6, 2012, at Irvine, California.


Kerry V. Keefe