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

17 **ANTELOPE VALLEY**
18 **GROUNDWATER CASES**

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

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

24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
26 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
27 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' PHASE 4
TRIAL SETTING CONFERENCE
STATEMENT**

Date: December 11, 2012
Time: 9:00 a.m.
Dept.: 1

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1 **I. INTRODUCTION**

2 Over the last 18 months, the Public Water Suppliers have participated in numerous
3 mediation sessions with and without the assistance of Justice Robie. There were years of earlier
4 mediation efforts including three other mediators. The mediation process has been expensive and
5 time-consuming for the Public Water Suppliers. The Public Water Suppliers provided the
6 technical analysis critical to any real and lasting solution to the ongoing overdraft conditions.
7 Despite their diligent efforts, a settlement has not been reached between the Cross-Complainants
8 and Cross-Defendants. While the parties might one day reach agreement on some issues, no
9 settlement has been reached that resolves any claims or causes of actions pled in the Adjudication
10 Cross-Complaint.

11 Overdraft conditions in the Basin cannot be allowed to continue. The USGS has made
12 public its recent studies showing overdraft continues, and will continue, to cause land subsidence
13 and loss of groundwater in storage even if the parties immediately reduce their overall
14 groundwater production to the Court determined safe yield of 110,000 AFY. Despite evidence of
15 past, current and future harm to the Basin, landowners will not appropriately reduce their
16 groundwater use unless they are ordered to do so by the Court. Indeed, there is no reasonable
17 dispute that many landowners have produced excessive amounts groundwater without any regard
18 for the impact on the Basin, notwithstanding ample notice of overdraft conditions dating back to
19 the 1940s.

20 The Court has acknowledged its duty to protect the Basin, the public water supply for
21 hundreds of thousands of domestic users. The Court's obligation to protect the groundwater
22 supply has a greater priority than allowing landowners to continue to profit from their unrestricted
23 production of groundwater. Unless the Court reduces the parties' pumping, it will continue to
24 irreparably harm the Basin, causing more subsidence, loss of water in storage, and water quality
25 problems. For example, as groundwater levels decline, dangerous arsenic concentrations occur in
26 the Basin. The extraordinary cost to the public of having to remove arsenic from the public water
27 supply is an unacceptable public safety risk and an extremely expensive public health problem.
28

1 The Public Water Suppliers, in contrast to the landowners, continue their efforts to be
2 good stewards of this critical water resource. For many years, the Public Water Suppliers have
3 voluntarily reduced their groundwater pumping and have spent many tens of millions of dollars to
4 purchase imported water from the State Water Project (in lieu of pumping) and to construct its
5 necessary infrastructure. Stated simply, the Public Water Suppliers have been working to protect
6 the Basin for years at great expense while the landowners have damaged the Basin to generate as
7 much profit as possible from unrestricted groundwater use.

8 The Court should now determine each parties' current groundwater use in order to
9 establish the baseline from which the Court will enjoin pumping of native groundwater in excess
10 of the native yield of the Basin. Restricting excessive pumping of native groundwater will
11 accomplish two things primarily. First, it is a vital step in restoring the Basin by increasing
12 groundwater in storage, raising water levels, and stopping land subsidence. Second, ordering an
13 immediate end to the ongoing unrestricted excessive pumping may motivate some parties to
14 resolve their outstanding issues.

15 There is no dispute that this case has been lengthy. Now is the time for the parties to
16 prove their reasonable and beneficial groundwater use so that the Court can reduce groundwater
17 use as soon as possible in 2013. For these reasons, the Public Water Suppliers respectfully
18 submit the following proposals for the needed timely completion of the litigation to achieve a
19 physical solution to the overdraft.

20 **II. EACH PARTY'S CURRENT GROUNDWATER PRODUCTION IS NEEDED**
21 **NOW.**

22 The "prove up" of each party's current groundwater use should be the next phase of trial.
23 The Basin is and has been an overdraft condition for more than 50 years. Groundwater
24 production continues to exceed the combined native and supplemental yields even after the Court
25 found the Basin to be in an overdraft condition. The Basin will continue in its overdraft condition
26 because California law allows parties to pump without any effective legal limitations until a court
27 imposes groundwater production limits. The Court cannot wait any longer to impose the limits on
28 groundwater production. The longer the wait, the more harm to the public's water supply.

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1 Within the large unincorporated areas and the cities of Lancaster, and Palmdale, there are
2 hundreds of thousands of people who depend upon the Basin's water supply. As already
3 recognized by the Court, the Basin has lost millions of acre-feet of water due to the continued
4 unrestricted groundwater use,. In addition, land subsidence is ongoing and there is a risk of
5 further harm to the public.

6 The court cannot impose limits to effectively reduce groundwater production until the
7 court knows how much water is currently produced from the Basin. In other words, the Court
8 needs "benchmark" groundwater production information from each party for the Court to order
9 meaningful and real groundwater use reductions.

10 Finally, a physical solution must have reduced levels of groundwater pumping. If not, the
11 harm the harm to the public's water supply. To have a long-term physical solution the court
12 must first determine the parties' respective groundwater rights. Since it will take time for the
13 court to determine water rights, the Court can and should enter interim relief as soon as it
14 determines current groundwater production in February, 2013.

15 **III. THE PRESENTATION OF EVIDENCE OF CURRENT PUMPING CAN BE**
16 **STREAMLINED AT TRIAL.**

17 The Public Water Suppliers have submitted a proposed discovery order and a proposed
18 Case Management Order for the Phase 4 trial. Once the court signs the discovery order and all
19 parties have responded to the court-ordered discovery, it will be possible to streamline the
20 presentation of groundwater pumping evidence. Much of the evidence may be unopposed. The
21 following methods, in order of preference, are generally accepted to show groundwater pumping
22 (see, e.g., *Quantification of Production*, Rules and Regulations of the Mojave Watermaster,
23 www.mojavewater.org/files/Rules.pdf at pp. 7-10, attached hereto as Exhibit A (downloaded Dec.
24 10, 2012)):

- 25 1. Water meters
- 26 2. Determination by electrical energy consumption of time of usage records,
27 correlated with a current pump test
- 28 3. Determination by fuel consumption

4. Acreage irrigated multiplied by a water duty for a particular crop

It is expected that estimates of groundwater production using these methods, supported by admissible evidence, can be readily agreed to, and submitted to the Court in a standardized fashion. Estimates using other methods will require individualized presentation.

IV. PRESCRIPTIVE RIGHTS SHOULD BE TRIED IMMEDIATELY AFTER CURRENT PUMPING

The recent appellate decision in *City of Santa Maria v. Adam* (Nov. 21, 2012) ____ Cal.App.4th ____, 2012 Westlaw 5871028, has both bolstered and clarified the elements and evidence needed to prove a prescriptive rights case. [It is believed to be the first groundwater case in fifty years to affirm a trial court groundwater decision in all significant respects.] Among other things, it holds that: (1) the elements of prescription are established by showing five years of continuous pumping during overdraft and notice of the overdraft; (2) more than one five-year period can be used to establish prescriptive rights; (3) constructive notice of the overdraft is sufficient; (4) a long-term severe water shortage itself can be enough to satisfy the element of notice; and (5) the formation of a local entity in response to persistent water shortage problems can be sufficient on its own to support the conclusion that landowners are on notice that the Basin is in overdraft.

Based on the *Santa Maria* decision, the Public Water Suppliers estimate that they can put on their case for prescriptive rights in a few days. They will be ready to do so after the Court determines the parties' respective groundwater use. The Public Water Suppliers agree with some of the landowners that the self-help defense does not have to be tried at the same time if landowners need yet even more time to assemble their self-help evidence.

The Court previously suggested that landowners file a motion for summary adjudication of the issue of prescription. They have not done so. The Public Water Suppliers believe that a preferred alternative to a motion for summary adjudication would be a bifurcated trial on the issue of prescription. The Public Water Suppliers have already responded, prior to the Phase 3 trial, to extensive discovery concerning the basis for their prescriptive rights claims. Therefore, the Public Water Suppliers propose a trial on prescriptive rights, as soon after the Phase 4 trial as can be

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1 scheduled by the Court.

2 **V. THE GROUNDWATER ADJUDICATION PROCEEDINGS ARE SPECIAL**
3 **PROCEEDINGS WITH EQUITABLE CLAIMS AND THE PARTIES' WATER**
4 **RIGHTS, INCLUDING PRESCRIPTIVE RIGHTS, SHOULD BE TRIED**
5 **WITHOUT A JURY**

6 Like other case issues, some landowner parties are asking the Court to again reconsider its
7 decision on whether there should be a jury trial for these special proceedings including its
8 equitable claims. The Court will recall the parties submitted briefs on the jury trial issue more
9 than three years ago. As noted earlier, these coordinated groundwater adjudication proceedings
10 are special proceedings involving equitable considerations and determinations by the Court.
11 There is no right to a jury trial. If the Court is going to reconsider the jury trial issue, the Public
12 Water Suppliers respectfully request the opportunity to submit legal briefs and a hearing.

13 **VI. AFTER THE COURT DETERMINES CURRENT GROUNDWATER**
14 **PRODUCTION, THE COURT CAN ORDER INTERIM RELIEF AND LATER**
15 **IMPLEMENT THE PHYSICAL SOLUTION TO THE OVERDRAFT.**

16 The Court has recognized the Basin has been in overdraft for at least the last 50 years.
17 The issue is not whether to enter an order reducing pumping but how to reduce the pumping as
18 soon as possible. Given the lengthy proceedings to date and continuing harm to the Basin, it is
19 increasingly necessary that the Court protect the Basin from further overdraft pumping, to uphold
20 and protect public water suppliers' domestic use of groundwater, and to other domestic water
21 users including the mutual water companies and members of the classes.

22 **VII. THE COURT CAN AND SHOULD CONCLUDE THE ADJUDICATION**
23 **PROCEEDINGS BEFORE THE END OF 2013.**

24 The Court can resolve the remaining issues in 2013 and the following schedule is
25 respectfully submitted:

26 February - Determine the parties' current groundwater production and hear motion for
27 preliminary injunction to enjoin pumping of native groundwater.

28 March and April - Determine the parties' respective rights including prescriptive rights.

May - Determine landowner parties' self help, if any, during the prescriptive period(s).

June - Determine whether parties pump for a reasonable and beneficial use.

October – Approve a physical solution to the overdraft after considering the court's

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determination of the parties' water rights.


VIII. CONCLUSION.

Whether for court determination of the parties' contested water rights, approval of an overall physical solution settlement, or issuing an interim order enjoining production of native groundwater, the Court will need to determine the current groundwater production for each party. The Public Water Suppliers respectfully request the Court to continue with its stated intention to have the Phase 4 trial commence in February to determine the parties' current groundwater production.

Dated: December 10, 2012

BEST BEST & KRIEGER LLP

By


ERIC L. GARNER
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STEFANIE D. HEDLUND
Attorneys for Cross-Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

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EXHIBIT “A”

1 F. *De Novo Nature of Proceeding.* Upon filing of a petition to review
2 Watermaster action, the Watermaster shall notify the Parties of a date when the Court
3 will take evidence and hear argument. The Court's review shall be de novo and the
4 Watermaster decision or action shall have no evidentiary weight in such proceeding.

5 G. *Payment of Assessments Pending Review.* Payment of Assessments levied
6 by Watermaster hereunder shall be made pursuant to the time schedule in Exhibit "D," to
7 the Judgment which is attached hereto as Exhibit "B" to these Rules and Regulations
8 notwithstanding any motion for review of Watermaster actions, decisions, rules or
9 procedures, including review of Watermaster Assessments.

10 11. *Quantification of Production.* In order to enable verification of production each
11 party who produces water must have an accurate method, approved by Watermaster, for
12 quantifying production, from each source, on a quarterly basis. Watermaster may approve
13 methods such as the use of flow measuring devices, electrical energy consumption records, time
14 of usage records or other methods having equivalent accuracy. Watermaster may require meters
15 on all production facilities if conditions are warranted.

16 A. *Flow Measuring Devices.* Generally the term "flow measuring device"
17 means a meter, weir, flume or other such device.

18 B. *Meters.* Generally the term meter shall refer to a positive displacement
19 velocity impeller, venturi or orifice-type meter with a totalizer or other meter acceptable
20 to the Watermaster. Meters shall be accessible and installed according to manufacturer's
21 recommendations and good design practices.

22 (1) *Meters Existing on Date of Entry of Judgment.* Producers who
23 were metering Production as of the date of entry of the Judgment shall continue to
24 meter Production.

25 (2) *Surface Diversions.* Surface water diversions shall be measured
26 with a flume or weir and stage recorder or a meter capable of accurately
27 measuring and recording such diversions.
28

1 (3) *Meter Tests.* Each Producer shall be responsible for having
2 meter(s) tested at least once every two (2) years by an approved meter tester. The
3 name, address and telephone number of all Watermaster approved meter testers
4 shall be maintained and be available from the office of the Watermaster. Results
5 of all meter tests shall be submitted to Watermaster within seven (7) days of test.
6 The tolerance for each meter shall be plus (+) or minus (-) five (5%) percent of
7 the manufacturer's standard. Watermaster may require an aggregate accuracy of
8 plus (+) or minus (-) two (2%) percent. Meters which are found to be within the
9 specified limits of accuracy shall be sealed by Watermaster following each test.

10 (4) *Repair or Replacement of Inaccurate Meters.* Any defective or
11 inaccurate meter must be repaired within thirty (30) days of notification by
12 Watermaster that the meter is defective.

13 (5) *Interim Meter Tests.* Should a Producer at any time discover that a
14 meter which measures the water Production from his well is measuring
15 inaccurately, he shall immediately notify Watermaster thereof, have the meter
16 retested and, if it is measuring inaccurately, have the same repaired and retested at
17 the earliest practical time.

18 (6) *Meters Required for Domestic Deliveries.* Any Producer except as
19 herein provided who provides piped water for human consumption to more than
20 five (5) service connections is required by Paragraph 24(d) of the Judgment to
21 install an individual water meter on each service connection within three (3) years
22 from the date of entry of the Judgment. This provision shall apply only to public
23 water systems, including but not limited to, municipal water purveyors, investor
24 owned water service companies, mutual water companies and county service
25 areas. Associations delivering domestic water to its members or landlords who
26 provide water to their tenants shall only be required to meter the total amount of
27 water produced.
28

1 C. *Determination by Electrical Energy Consumption or Time of Usage*
2 *Records.* Water production may be determined by electrical energy consumption or time
3 of usage correlated with a current pump test provided that all of the following conditions
4 are met:

5 (1) The pumping plant shall be the only connected load on the
6 electrical meter or time of usage recorder except that a booster pump may be
7 connected to the electrical meter if the booster pump is also tested concurrently.

8 (2) The pump test shall be performed by Southern California Edison
9 Company, or other qualified pump tester approved by the Watermaster.

10 (3) The pump test shall have been performed within two (2) years of
11 the end of the water year for which Production is being reported. The mechanical
12 condition of the pump and motor and the discharge head must be essentially the
13 same as existed during the reporting period.

14 D. *Alternative Measuring Methods.* Any Party choosing not to utilize a water
15 meter or other approved water measuring device such as a weir or flume or electrical
16 energy consumption records or a time of usage recorder shall submit to Watermaster a
17 proposal for another method by which quarterly production will be measured or
18 estimated. Any Party proposing such method shall provide a certification that the method
19 is at least as accurate as the methods approved herein. Such certification shall be
20 provided by a registered professional engineer or other person acceptable to Watermaster.

21 E. *Engine Driven Pumps.* Any party who produces water by engine driven
22 pump and chooses to measure the water produced by method(s) other than a water meter
23 shall provide a certification that the method of measurement is at least as accurate as a
24 water meter. Such certification shall be provided by a registered professional engineer or
25 other person acceptable to Watermaster. Such certification shall be provided within one
26 (1) year from the date of entry of the Judgment. In the absence of such certification a
27 water meter will be required.
28

1 F. *Records Provided to Watermaster.* Parties must provide copies of all
2 records used to quantify water production as outlined in A through E above, including,
3 electrical consumptions records, pump test records, flow meter readings, flow meter
4 calibration tests, fuel consumption records, time of use meter records or any other records
5 used. Additionally, Watermaster shall acquire electrical consumption records and pump
6 test records maintained by Southern California Edison Company.

7 G. *Compliance.* Any party not in compliance with the provisions of this
8 Section 11, as outlined in A through F above, shall be assessed for all applicable
9 assessments based on Watermaster's estimate of water production, the total annual
10 pumping capacity of the diversion works, or the producer's Base Annual Production.

11 12. *Transfers of Production Rights.* Transfers of Production Rights will become
12 effective as follows:

13 A. *Notice to Watermaster of Transfers.* Any transfer of a Production Right or
14 portion thereof shall be operable only when the requirements of Exhibit "F" of the
15 Judgment are met, when both Transferor and Transferee have stipulated to the Judgment,
16 when all current and past due assessments owed to Watermaster by the transferee and the
17 transferor have been paid, and when the Parties file with the Watermaster a copy of the
18 appropriate transfer documents which:

19 (1) Identify both the transferee(s) and the transferor(s) together with
20 the name of the responsible parties, the Party to receive any Carryover credit and
21 the name(s) of the person(s) who will pay any applicable assessments. Any
22 transferee must be or become a Party pursuant to Paragraph 40 of the Judgment
23 prior to the date of the transfer.

24 (2) Identify the nature of the transfer, i.e., sale, assignment, lease, etc.

25 (3) For Temporary Transfers accurately recite the maximum amount
26 of Transferor's share of Free Production Allowance and/or Carryover Right to be
27 transferred and the price per acre-foot to be paid by the Transferee(s). The
28 temporary nature of the transfer must be identified as either a one year transfer of

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 10, 2012, I served the within document(s):

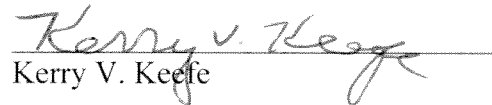
**PUBLIC WATER SUPPLIERS' PHASE 4 TRIAL SETTING CONFERENCE
STATEMENT**

- ☒ 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 10, 2012, at Irvine, California.


Kerry V. Keefe