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

**ANTELOPE VALLEY GROUNDWATER
CASES**

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

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

Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California,
County of Riverside, Case Nos. 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' BRIEF RE
JURY TRIAL

Date: September 6, 2013
Time: 10:00 a.m.
Dept.: TBD

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Pursuant to the Court's order during the July 29, 2013 Trial Setting Conference, the Los Angeles County Waterworks District No. 40, the City of Palmdale, the City of Lancaster, the Rosamond Community Service District, the Littlerock Irrigation District, the Palm Ranch Irrigation District, the Desert Lake Community Services District, the North Edwards Water District, the Palmdale Water District, the Quartz Hill Water District, and the California Water Service Company (collectively "Public Water Suppliers") hereby submit their brief re jury trial, as follows:

I. INTRODUCTION

The Phase 5 trial concerns the parties' claims to water rights. While water rights are akin to property rights, the 1928 constitutional amendments effectively altered the nature of water rights in California by introducing the equitable doctrine of "reasonable use" to all water rights claims. Under California law, parties are entitled to a jury trial only if the suit is not an equitable or special proceeding and the cause of action stems the common law remedy of "action on the case" that existed prior to the codification of jury trial rights in the California Constitution in 1850. As the nature of water rights adjudication and the reliefs sought stem from equity, there is no right to jury trial in this current phase.

II. ARGUMENT

A. There Is No Right to a Jury Trial in an Equitable Proceeding

The right to jury trial does not apply where the *gist* of the action is equitable. (See *C&K Engineering Contractors v. Amber Steel Co., Inc.* (1978) 23 Cal.3d 1, 9; *Hodge v. Superior Court* (2006) 145 Cal. App. 4th 278, 283 ["if the action is essentially one in equity and the relief sought depends upon the application of equitable doctrines, the parties are not entitled to a jury trial."] [citation and quotation marks omitted]; *Jefferson v. County of Kern* (2002) 98 Cal.App.4th 606, 614.)

The "gist of the action" means the nature of the rights involved in the particular case: "If the action has to deal with ordinary common-law rights cognizable in courts of law, it is to that extent an action at law [and jury triable]. . . . On the other hand, if the action is essentially one in equity and the relief sought depends upon the application of equitable doctrines, the parties are

1 not entitled to a jury trial.” (*C&K Engineering Contractors, supra*, 23 Cal.App.3d at 9 [internal
2 quotes omitted].)

3 The critical factor in excluding the right to jury trial is that the relief sought was historically
4 available only in courts of equity; “Without the employment of this doctrine, essentially equitable,
5 there was no remedy at all.” (*C&K Engineering Contractors, supra*, 23 Cal.3d at 9; see *DiPirro v.*
6 *Rondo Corp.*, (2007) 153 Cal. App. 4th 150, 179 [“bifurcation of [an equitable action to abate a public
7 nuisance] and separate initial adjudication of [] defense did not transform the case into an action at
8 law or require a jury trial.”].)

9 Although the pleadings may provide some indication whether the action is of a legal or
10 equitable nature, they are not conclusive. (*C&K Engineering Contractors, supra*, 23 Cal.3d at 9;
11 *DiPirro v. Bondo Corp.*, *supra*, 153 Cal.App.4th at 179.) In *C&K Engineering Contractors*, “the
12 complaint purports to seek recovery of damages for breach of contract, in form an action at law in
13 which a right to jury trial ordinarily would exist.” (*C&K Engineering Contractors, supra*, 23 Cal.3d 1
14 at 9.) However, because the complaint sought relief which was available only in equity (under
15 doctrine of promissory estoppel), a jury trial is not available. (*Id.*) Likewise, the reliefs sought by the
16 parties in these coordinated proceedings are available only in equity.

17 **B. The “Gist” of These Proceedings Is One of Equity**

18 As causes of action and the reliefs sought by the parties to these proceedings all stem from
19 equity, the right to a jury trial does not apply. Here, Bolthouse and Richard Wood sued for quiet
20 title. (See Exs. D & H.) The Public Water Suppliers, Antelope Valley-East Kern Water Agency,
21 Antelope Valley Groundwater Association, AV United Mutual Group, Bolthouse, Grimmway,
22 Richard Wood and Tejon Ranch have sued for declaratory and injunctive relief and asked this
23 court to determine all the rights to groundwater in the Antelope Valley Groundwater Basin
24 (“Basin”). (See Exs. A, B, C, E, F, G, I, J, K, L & M.) As this Court has determined that the
25 Basin is in overdraft, it therefore has a constitutional duty to consider a physical solution in
26 resolving the parties’ water rights claims. (*City of Lodi v. East Bay Municipal Utility District*
27 (1936) 7 Cal. 2d 316, 341.)

28 California courts have long established that a “physical solution” is “an equitable remedy”

1 designed to alleviate overdrafts and the consequential depletion of water resources in a particular
2 area, consistent with the constitutional mandate to prevent waste and unreasonable water use and
3 to maximize the beneficial use of this state's limited resource.” (*City of Santa Maria v. Adam*
4 (2012) 211 Cal. App. 4th 266, 288 (“*Santa Maria*”) [quoting *California American Water v. City*
5 *of Seaside* (2010) 183 Cal.App.4th 471, 480] [emphasis added]; see also, *City of Barstow v.*
6 *Mojave Water Agency* (2000) 23 Cal. 4th 1224, 1250 [“this court recognized a trial court’s power
7 to enforce an equitable solution”]; *City of Los Angeles v. City of San Fernando* (1975) 14 Cal. 3d
8 199, 291 (“*San Fernando*”) [“Whether [the physical] solution is fair and just to all parties and
9 interests concerned can only be determined by the trial court . . . and nothing we say should be
10 deemed restrictive of the trial court’s equitable discretion in this regard.”]; *Tulare Irrigation Dist.*
11 *v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal. 2d 489, 574 (“*Tulare*”) [“The equity courts[,
12 in water cases concerning appropriative rights,] possess broad powers and should exercise them
13 so as to do substantial justice.”].)

14 The court’s equitable power to adjudicate water rights and to impose a physical solution
15 comes from the 1928 constitutional amendment that requires all water uses to be reasonable.
16 (Calif. Constitution, Article X, § 2.) As a result of this constitutional amendment, no party can
17 establish any right to use water in the State of California unless that party first establishes that the
18 water is being put to a reasonable and beneficial use. (See *Gin S. Chow v. City of Santa Barbara*
19 (1933) 217 Cal. 673, 700, 707.) Under this constitutional mandate, a trial court must “determine
20 whether [riparian or overlying] owner . . . are putting the waters to any reasonable beneficial uses,
21 giving consideration to all factors involved, including reasonable methods of use and reasonable
22 methods of diversion. From a consideration of such uses, the trial court must then determine
23 whether there is a surplus in the water field subject to appropriation.” (*Tulare, supra*, 3 Cal. 2d at
24 524-25.) This is a determination that is made by the court, not a jury. (*Josin v. Marin Municipal*
25 *Water District* (1967) 67 Cal.2d 132, n. 7 [citing *Tulare, supra*, 3 Cal. 2d at 524-25].) Failure to
26 make this showing means there is no water right to dispute. (*Id.*)

27 Consequently, a cause of action for physical solution is a request that the court use its
28 equitable powers to enforce this constitutional mandate. (*City of Lodi, supra*, 7 Cal.2d at 339-

340; *Imperial Irrigation District v. State Water Resources Control Board* (1990) 225 Cal.App.3d 548, 572 [“A ‘physical solution’ involves the application of general equitable principles to achieve practical allocation of water to competing interests so that a reasonable accommodation of demands upon a water source can be achieved.”].) The California Supreme Court explained the Court’s physical solution remedy as follows:

the 1928 constitutional amendment . . . compels the trial court, before issuing a decree entailing such waste of water, to ascertain whether there exists a physical solution of the problem presented that will avoid the waste, and that will at the same time not unreasonably and adversely affect the prior appropriator’s vested property right. In attempting to work out such a solution the policy which is now part of the fundamental law of the state must be adhered to. It is declared in section 3 of article XIV of the Constitution: [¶] “It is hereby declared that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare . . .”

(*Lodi, supra*, 7 Cal. 2d at 339-40.)

Moreover, the other causes of action and reliefs sought in these proceedings are also based in equity. Bolthouse and Wood’s actions seeking quiet title are equitable. “Generally, there is no right to a jury trial in a quiet title action which is fundamentally equitable in nature.” (*Estate of Phelps v. Odekerken* (1990) 223 Cal.App.3d 332, 340.) Likewise, actions for declaratory relief is equitable. (*City of Los Angeles v. City of Glendale* (1941) 23 Cal.2d 68, 81 [“In giving declaratory relief, a court has the powers of a court of equity.”].)

Furthermore, California courts have decided many cases adjudicating groundwater rights which sought quiet title, declaratory relief, or injunctive relief.¹ In each case, the action was

¹ In *Katz v. Walkinshaw* (1902) 141 Cal. 116, 138, the court determined groundwater rights in the context of a request for injunctive relief. In *Hudson v. Dailey* (1909) 156 Cal. 617, 620 plaintiff sought to quiet title to water and an order enjoining the defendants from pumping. The *Hudson* court also ruled in favor of defendants on the basis of laches, which is an affirmative defense exclusive to equitable actions. (*Id.* at p. 630.) In *Orange County Water District v. City of Riverside* (1959) 173 Cal.App.2d 137, 168, the court described the complaint for a declaration of the groundwater rights as one for quiet title. In *City of San Bernardino v. City Of Riverside* (1921) 186 Cal. 7, 23, the court referenced Civil Code section 1007 as the basis for obtaining prescriptive rights to water. Section 1007 is the statute for the adverse possession cause of action. In *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 207, the city of Los

1 resolved by the court and not a jury. The Public Water Suppliers can find no examples where a
2 jury was called upon to decide these issues. The Public Water Suppliers are also unaware of any
3 cases suggesting that the parties are entitled to a jury trial in determining the following water
4 rights that the Court may adjudicate in the Phase 5 trial: federal reserve rights, overlying rights,
5 appropriative rights, prescriptive rights, domestic rights, municipal rights, and return flow rights.
6 In fact, most of these rights concern purely legal issues, which must be determined by the court,
7 not a jury. (Code Civ. Proc. § 591 [“An issue of law must be tried by the court, unless it is
8 referred upon consent”].)

9 **C. Cases Involving Prescriptive Easements to Land Are Inapposite**

10 Public Water Suppliers anticipate that the overlying owners will attempt to draw parallels
11 between adjudicating prescriptive water rights and determining prescriptive easements to land.
12 However, any such comparisons are misguided for many reasons. First, unlike ownership in real
13 property, water rights in California are tied to water use, and more specifically, reasonable water
14 use. (*State of California v. Superior Court* (2000) 78 Cal. App. 4th 1019, 1024 [“modern water
15 law focuses on the concept of water rights rather than water ownership”].) In the seminal case,
16 *Katz v. Walkinshaw*, California Supreme Court rejected the English common law doctrine of
17 absolute ownership of percolating groundwater and adopted the “doctrine of reasonable use”.
18 (*supra*, 141 Cal. at 134.) In contrast, rights in real property are defined by ownership, not use.

19 Second, this court’s authority to adjudicate water rights and to enforce a physical solution
20 is derived from the power granted to the court by the State Constitution and, as discussed in
21 further details below, California Water Code. Unlike the prescriptive easement cases, this Court
22 has not been asked to use the ancient legal remedy of “action on the case,” or any other similar
23 remedy that existed prior to 1850. As the California Supreme Court explained, the right to a jury
24 trial as guaranteed by the Constitution is “the right as it existed at common law in 1850, when the
25 Constitution was first adopted.” (*C&K Engineering Contractors, supra*, 23 Cal.3d at 8 [emphasis
26 added].) As discussed above, the 1928 constitution amendment fundamentally changed how

27
28 Angeles sued to quiet title and obtain injunctive relief.

1 California treats all rights in water. Unlike rights in real property, all water rights and priorities
2 are defined by the equitable doctrine of “reasonable use”.

3 As such, the real property cases are not applicable for the purposes of determining jury
4 trial rights in water adjudication cases. Here, the Court is using authority granted by the
5 Constitution to determine water rights, and not the authority used in the easement-to-land cases.
6 Consequently, there is no right to a jury trial for this action.

7 **D. Determination of Surface Water Prescriptive Rights, Like Groundwater**
8 **Prescriptive Rights, Is Within the Equitable Power of the Court, for Which**
9 **No Jury Trial Is Warranted**

10 During the July 29, 2013 hearing, the Court asked the parties to distinguish surface water
11 (riparian) prescriptive rights from overlying (groundwater) prescriptive rights in the context of
12 jury trial rights. The doctrine of “reasonable use” set forth in Article X, Section 2 of the
13 California Constitution applies to all water rights—regardless of whether the water was
14 appropriated or whether the right is riparian or overlying. (*Tulare, supra*, 3 Cal. 2d at 524 [“The
15 effect of this amendment has been to modify the long-standing riparian doctrine . . . , and to
16 apply, by constitutional mandate the doctrine of reasonable use between riparian owners and
17 appropriators, and between overlying owners and appropriators.”].) Since the court’s authority to
18 adjudicate surface and groundwater rights stems from this equitable doctrine, there is no right to
19 jury trial for an action concerning prescription against either riparian or overlying rights.

20 The key difference between prescription against riparian rights and prescription against
21 overlying rights lies in the more perceptible physical clues that downstream riparian owners may
22 have that their water has been prescripted. If an upstream user diverts all or most of the water
23 from the river, an attentive downstream riparian owner will know immediately. Such knowledge
24 of adverse use is required to perfect a prescriptive right against a riparian owner. (*Santa Maria,*
25 *supra*, 211 Cal. App. 4th at 293.) However, “[i]n the groundwater context [the perfection of
26 prescriptive rights] requires evidence from which the court may fix the time at which the parties
27 ‘should reasonably be deemed to have received notice of the commencement of overdraft.’” (*Id.*
28 [quoting *San Fernando, supra*, 14 cal. 3d at 283] [emphasis added].) The “reasonable” standard
to the notice element to establish prescriptive right to groundwater results from the perceived

1 difficulties that owners of overlying rights may have in noticing adverse use of their water. (*Id.*)
2 While such a distinction exists between surface water and groundwater appropriations, this is a
3 distinction without a difference as the “gist” of riparian rights action and the “gist” of an
4 overlying rights action lie in the same equitable doctrine of “reasonable use”. As discussed
5 above, there is no right to jury trial in such equitable proceedings.

6 **E. To the Extent This Action Is Not an Equitable Proceeding, It Is a Special**
7 **Proceeding, for Which Jury Trial Is Not Required**

8 In addition to legal and equitable actions, there are also “special proceedings.” “Special
9 Proceedings” are statutory proceedings (some of which are enumerated in CCP § 1063 *et seq.*)
10 that generally were unavailable at common law or in equity. (See *People v. Superior Court (Laff)*
11 2001) 25 Cal.4th 703, 725 [“special proceedings” are confined to statutory proceedings that were
12 neither “an action at law [nor] a suit in equity”].) There is no right to a jury trial in “special
13 proceedings” unless it is expressly made available by statute. (See *Cornette v. Department of*
14 *Transp.* (2001) 26 Cal.4th 63, 76; *Kinder v. Superior Court (Market Ins. Corp.)* (1978) 78
15 Cal.App.3d 574, 581.) The quasi-legislative nature of a groundwater adjudication renders it a
16 “special proceeding” for which no jury trial is required.

17 For example, Water Code section 2000 *et seq.* established a procedure applicable to “any
18 suit brought in any court . . . for determination of rights to water.” (Water Code § 2000.) This
19 statute allows the court to refer findings of fact to the State Water Resources Control Board. (*Id.*)
20 (The reference must take place immediately after the complaint was filed and before any issues
21 have been cited by the judge.) This procedure includes all issues relating to rights to water use,
22 and does not exclude prescription or any other kind of claim. This procedure is lawful because
23 water rights claims are, by their very nature, statutory. Consequently, to the extent that the court
24 does not find these proceedings to be based in equity, the court should treat all actions involving
25 the assertion of water rights as a “special proceeding” for which no jury is required.

26 **F. Trying These Proceedings in Phases Does Not Grant Parties Jury Trial**
27 **Rights, Where None Otherwise Exists**

28 Section 598 of the Code of Civil Procedure allows the court, in the interest of justice or

1 for the efficiency of handling the litigation to bifurcate or otherwise sever the action into separate
2 trial phases. Here, the Court has ordered these coordinated proceedings to be tried in phases. In
3 Phase 5, the Court will be determining the parties' claim to water rights. While the Court may
4 try these proceedings in phases, the Court cannot grant jury trial rights, where none exists.
5 (*DiPirro, supra*, 153 Cal. App. 4th at 184 [the "bifurcation of [an equitable] proceeding . . . did
6 not transform the case into an action at law or require a jury trial".]) As stated above, the issues
7 before the Court are equitable in nature and/or, at the very least, constitute "specially
8 proceedings", none of which entitles the parties to a jury trial.

9 **G. To the Extent There Are Causes of Action, Not Based in Equity, the Court**
10 **Should Try Those Causes of Action at a Later Time in the Interest of Justice**

11 The Phase 5 trial concerns the parties' claims to water rights, which are equitable in
12 nature. To the extent there are remaining causes of caution, for which jury trial is applicable, the
13 Court should try those causes of action at a later phase. (*See* Code Civ. Proc. § 598.) In actions
14 involving both legal and equitable issues, most courts will try the equitable issues first without a
15 jury because this promotes judicial economy by potentially obviating the necessity for a jury trial
16 of the legal issues. The court has noted:

17 It is well established in California jurisprudence that "[t]he court
18 may decide the equitable issues first, and the decision may result in
19 factual and legal findings that effectively dispose of the legal
20 claims." This District Court of Appeal has observed that the "better
21 practice" is for "the trial court [to] determine the equitable issues
22 before submitting the legal ones to the jury." . . . "[T]he practical
23 reason for this procedure is that the trial of the equitable issues may
24 dispense with the legal issues in the case." In short, "trial of
25 equitable issues first may promote judicial economy."

26 (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157 [citations omitted].)

27 The court's rulings on the equitable issues may establish rights or defenses that leave
28 nothing further to be tried. (*Raedeke v. Gibraltar Sav. & Loan Ass'n* (1974) 10 Cal.3d 665, 671;
See *DiPirro, supra*, 153 Cal.App.4th at 185.) Even if the legal issues remain to be tried by a jury,
any finding of fact made by the judge on the equitable issues will be binding on the jury thus
significantly curtailing the jury's power as trier of fact on the legal issues. (*Dill v. Delira Corp.*
(1956) 145 Cal.App.2d 124, 129-130.)

1 The *Hoopes* court observed that the effect of this policy has “produced a number of cases
2 in which the bench resolution of equitable issues proceeded consideration of legal claims, and
3 curtailed or foreclosed legal issues.” (*Hoopes, supra*, 168 Cal.App.4th at 157; see *Walton v.*
4 *Walton* (1995) 31 Cal. App. 4th 277, 292-294 [rejecting argument that the holding in *Arciero*
5 *Ranches v. Meza* (1993) 17 Cal. App. 4th 114 does not allow equitable issues to be tried before
6 legal issues].)

7 Consequently, to the extent that the parties have any causes of action, for which a jury
8 trial right may apply (unconstitutional taking/inverse condemnation claims), those causes of
9 action should be resolved at a later time—after the equitable declaratory relief causes of actions
10 are tried.

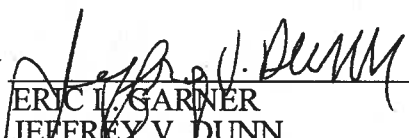
11 **III. CONCLUSION**

12 For the reasons stated above, claims regarding water rights disputes are equitable in nature
13 or are quasi-legislative special proceedings. As such, the Court should deny any and all requests
14 for jury trial for Phase 5.

15
16
17 Dated: August 16, 2013

BEST BEST & KRIEGER LLP

18
19 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 August 16, 2013, I served the within document(s):

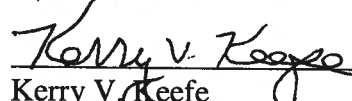
PUBLIC WATER SUPPLIERS' BRIEF RE JURY TRIAL

- ☒ 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 August 16, 2013, at Irvine, California.


Kerry V. Keefe