

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

Included Consolidated Actions:

Lead Case No. BC 325 201

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 325 201

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, consolidated actions, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391 869

**ORDER AFTER HEARINGS ON
JANUARY 31, 2018: (1) Antelope
Valley Watermaster's Motion for
Order Interpreting the Judgment
Regarding Pre-Rampdown
Production and Carry Over Water
Rights; (2) LACWD 40's Motion
Under Sections 6.5 of the Physical
Solution for Interpretation of
Judgment Confirming Applicability of
Rampdown and Carryover Rights to
Public Water Suppliers**

Judge: Honorable Jack Komar, Ret.

1 **This Document Pertains to Add-On Case:**

2 Little Rock Sand and Gravel, Inc., a California
3 corporation v. Granite Construction Company
4 Superior Court of California
County of Los Angeles, Case No. MC026932
5

6 The above-entitled matters came on regularly for hearing on January 31, 2018 at 9:00
7 a.m. in the Superior Court of California, County of Los Angeles, Room 222, the Honorable
8 Jack Komar (Ret.) presiding. The appearances are as stated in the record. The Court, having
9 read and considered the supporting and opposing papers, and having heard and considered the
10 arguments of counsel, and good cause appearing therefore, makes the following order:

11 The parties have filed, briefed and noticed for hearing three separate but related post
12 judgment motions requesting an interpretation of provisions of the stipulated judgment in this
13 matter.

14 All three of the motions in one form or other essentially address the same issue:
15 whether the provisions of Section 8.3 of the Judgment and Stipulation apply to only the parties
16 listed in Exhibit 4 to the Judgment or whether certain other parties also are accorded the benefit
17 of the limitations on imposition of the Replacement Water Assessments during the rampdown
18 period.¹

19 Thus, the issue is whether the during the years three through seven, commencing
20 January 1, 2018, if the public water producers reduce pumping in equal annual increments
21 until each reaches the production rights set forth in Exhibit 3 to the Judgment at the conclusion
22 of the ramp down period, December 31, 2023 may the Watermaster assess replacement water
23 charges pursuant to Section 9.2 for the difference between the post-rampdown production
24 right and the amount actually pumped or may the public water producers pump an annually
25 reduced amount for those five years paying only if they exceed the reduced quantity for the
26 year.

27
28 ¹ All references to "sections" are to the sections in the judgment unless otherwise noted.

1 The court has read and considered the moving and opposing briefs, heard oral
2 argument, and ordered the matters submitted.

3
4 1. **Antelope Valley Watermaster's Motion for Order Interpreting the Judgment**
5 **Regarding Pre-Rampdown Production and Carry Over Water Rights**

6 “The Watermaster” which was created pursuant to the stipulation and judgment
7 entered herein has filed a motion under the provisions of Section 6.5 of the Judgment
8 requesting that the court clarify whether certain parties to the judgment are entitled to the
9 benefits of the provisions of Section 8.3 which limits water replacement assessments during the
10 Section 8.2 rampdown period.

11 There is objection by certain Public Water Supplier parties to the standing of the
12 Watermaster to file its motion. The objection to the Watermaster’s standing to bring this
13 motion is overruled.

14 The Watermaster is an entity established in conformity to the Judgment herein to
15 administer the physical solution created by the judgment. The Watermaster is comprised of an
16 elected representative board which employs an executive officer and technical and
17 administrative staff. It is in effect an arm of the court created by the court to manage the
18 physical solution to the aquifer overdraft.

19 The Watermaster is charged with developing administrative rules and to monitor and
20 carry out the provisions of the Judgment and the physical solution.

21 Section 18 et seq. of the judgment specifies that the Watermaster has the duty to
22 prepare rules for the monitoring and development of the physical solution and enforcement of
23 the judgment. Section 18.7 provides for application to the court and authorizes the court to take
24 or approve any actions that the Watermaster would be authorized to take or approve under the
25 judgment.

26 The Watermaster Board is in the process of developing and approving rules to
27 administer the physical solution as required by the judgment and can only act upon a
28 unanimous vote. The Watermaster Board is divided on the issue of the application of

1 certain portions of the judgment relating to the rampdown provisions during the first seven
2 years following the entry of judgment. Thus, the Watermaster requests that the court rule on
3 whether it must apply the Section 8.3 exemption to the public water producers for the five year
4 period commencing January 1, 2018.

5 Summarizing the Watermaster Motion, the issue presented by the Watermaster is
6 whether the parties listed in Exhibit 3 to the Judgment but not listed in Exhibit 4 to the
7 Judgment, and not otherwise included or excluded, are entitled to the benefit of Section 8.3 of
8 the Judgment for the period between January 1, 2018 and December 31, 2023.

9 Judgment Section 5.1.1 et seq. refers to Exhibit 4, which lists all stipulating overlying
10 producing owners with pre-rampdown and post-rampdown production quantifications.

11 Judgment Section 5.1.6 provides for Non Overlying Production Rights: The public
12 water supplier parties listed in Exhibit three have production rights in the agreed to amounts
13 listed in the exhibit but there is no specification of pre-judgment water production
14 quantifications.

15 It is noted that Section 8.3 does not contain references to either Sections 5.1.1 et seq.,
16 5.1.6, or either Exhibits 3 or 4.

17 Counsel for the Watermaster has provided an objective, neutral analysis of the issue
18 and has requested the court to determine which position it should follow.

19 The Watermaster board must unanimously adopt a rule regarding these issues to enable
20 it to administer the physical solution.

21
22 **2. LACWD 40's Motion Under Sections 6.5 of the Physical Solution for**
23 **Interpretation of Judgment Confirming Applicability of Rampdown and**
24 **Carryover Rights to Public Water Suppliers**

25 The Public Water Producers, non-overlying water producers, have also filed a motion
26 requesting the court to interpret the-rampdown provisions of the judgment. The issue presented
27 is essentially the same as the issue presented by the Watermaster, namely, whether the parties
28 who are listed in Exhibit Three to the judgment are entitled to the benefit of Section 8.3 of the

1 judgment permitting them to reduce their water production over a period described as the
2 “rampdown period” without paying a replacement water assessment each year under the
3 provisions of Section 9.2, as they gradually reduce their water production to the stipulated
4 entitlement. Of course, any production over the annual reduced right would be subject to such
5 assessment, subject to Section 8.4 (Drought Conditions).

6 In addition, these Public Water Producer parties have also requested and then
7 withdrawn a request to interpret certain “carry-over” provisions provided for in the judgment.
8 That request will not be considered because it has been withdrawn.

9 A Motion has also been filed by Clan Keith Real Restate Investments, LLC (hereinafter
10 Clan Keith), a party who did not stipulate to the judgment but who is a “supporting party” and
11 bound by the terms of the judgment. Clan Keith is, an overlying land owner doing business as
12 Leisure Lake Mobile Estates, requesting the benefit of the provisions of Sections 8.2 and 8.3.

13 Essentially, all of the above motions are in the form of declaratory relief. The water
14 producers and Clan Keith cannot pump water from the aquifer without knowing what the
15 replacement water obligations are and the board cannot prepare rules implementing the
16 physical solution without the court’s interpretation of the terms of the judgment. The issues are
17 ripe for decision.

18 The question requires interpretation of the stipulated agreement between the parties and
19 the court’s judgment. All parties contend that the stipulation and judgment is clear on its face.
20 No party has offered parol or extrinsic evidence to interpret the stipulation or the judgment.

21 The Judgment signed on December 23, 2016 and entered thereafter adopted and
22 incorporated into its terms a “physical solution” to remedy a severe overdraft situation in the
23 Antelope Valley adjudication area. The physical solution was stipulated to by the vast majority
24 of parties to this coordinated proceeding.

25 In seeking approval of the stipulation and proposed judgment the parties to the
26 stipulation offered evidence and argument to justify and support the stipulation.

27 The court made independent findings based on the evidence submitted and found that
28 the then stipulated proposed physical solution was an effective mechanism to stop the overdraft

1 and restore the aquifer to health, adopting the stipulation in its entirety and incorporating it into
2 the judgment, thereby binding all stipulating and non-stipulating parties to its terms.

3 Based upon the testimony of experts offered without objection, or contradiction, the
4 court found that the then proposed physical solution, which included a gradual reduction of
5 pumping by a large number of water producers in the valley, both overlying owners and public
6 water producers, over a period of seven years would result in a reduction of pumping within
7 the aquifer to an amount not exceeding the safe yield after the seventh year following the
8 judgment, thereby preventing further overdraft and restoring the balance to the aquifer in the
9 Antelope Valley adjudication area.

10 The purpose of the expert testimony was clearly understood by the parties. A counsel
11 for the Public Water Suppliers stated on the record in advance of the testimony: “(expert) has
12 developed a model which can be used to show over time how the physical solution will impact
13 the basin. And it should come as no surprise that we are offering this to show that in fact it is a
14 physical solution.”

15 Counsel for a Landowner Party also commented on the record in advance of that expert
16 testimony that “none of the land owner parties are objecting to that (expert testimony) beyond
17 reserving the right to challenge a model, if necessary, in the future, to have contribution to a
18 model in the future, to have a model in the future vetted which will be used for purposes of . . .
19 which will be the ultimate model that is used.”

20 The experts’ testimony evaluated the methodology of the proposed physical solution
21 and the stipulation, which included a production ramp down of pumping for all parties on
22 Exhibits 3 and 4 as an implementation of the physical solution over the 7 year period. The
23 expert opinions included both the Exhibit 3 Public Water Suppliers as well as the Exhibit 4
24 overlying land owners in the application of the Section 8.3 provisions for the seven year ramp
25 down period.

26 The expert opinions were based on the provisions of the stipulation and court’s
27 previous phase statements of decision, subject to the specifics in the proposed judgment and
28 the stipulation. The testimony provided justification for the efficacy of the physical solution,

1 showing how the rampdown process would be able to bring the basin into balance within 7
2 years.

3 The expert opinions posited that the physical solution would be effective to eliminate
4 the overdraft and restore the basin to balance including all water producers in the gradual
5 rampdown over the projected seven year period.

6 The physical solution provides for a seven year period for restoration of the aquifer to
7 bring it into balance, commencing January 1, 2016 (Section 8.2); Section 8.3 provides for a
8 gradual reduction of all pumping from the native yield until the aquifer is in equilibrium and
9 limits the Replacement Water Assessments to pumping which exceeds the annual reduced
10 water production; Section 5.1.1 is very specific with Exhibit 4 which specifies both pre and
11 post rampdown production numbers overlying producers. On the other hand, Section 5.1.6
12 only provides the final production quantities for the Public Water Producers and makes no
13 reference to pre rampdown production.

14 The parties who object to the Public Water Producers and the Clan Keith positions
15 argue that because there are no pre-judgment water production numbers in the judgment for
16 those parties as reflected in Exhibit 4, it shows an intent that Exhibit 3 parties are not intended
17 to have the benefit of Sections 8.2 and 8.3 in the judgment, and because the only production
18 rights listed for them and Clan Keith are post rampdown quantities, any water extraction
19 after January 1, 2018 that exceeds the post-rampdown production right as shown in Exhibit 3
20 or elsewhere in the judgment is subject to a replacement water assessment pursuant to Section
21 9.2.

22 The opposing overlying pumpers do agree that there are to be no replacement water
23 assessments for any party for a period of 2 years, between January 1, 2016 and December 31,
24 2017, as specified in Section 8.3, during which all stipulating producers may pump from the
25 aquifer without a water replacement assessment. That clearly places all water producers, both
26 Exhibit 3 and Exhibit 4 parties, and supporting but non-stipulating parties who are bound by
27 the judgment, within the provisions of 8.3.

1 Section 8.3 specifically refers to producers without qualification as to public water
2 producers/purveyors or overlying owners. "Producers" is defined in the judgment Section
3 3.5.30 "as a party who produces ground water."

4 If a party produces more water than its rampdown allocation, an assessment may be
5 imposed to purchase water to replenish the over-pumped water. Section 9.2. provides for
6 replacement water assessments for pumping that exceeds the production right (plus return
7 flows from imported water) to be used to replace the excess pumping.

8 Section 8.4 is also helpful in determining the parties who may participate in the
9 Rampdown program. Section 8.4 provides for a drought management program for the public
10 water producers in the event of a drought occurring during the operation of the "rampdown
11 period. 8.3 specifically provides that "except as determined to be exempt during the
12 Rampdown Period pursuant to the drought program provided for in Section 8.4 (only the
13 Public Water Producers are included in 8.4), any amount produced over the required
14 *reduction* shall be subject to replacement water assessment." (italics added for emphasis). The
15 referral to "required reduction" further indicates that the public water producers are included
16 within the purview of Section 8.3.

17 As indicated above, pre and post rampdown production levels for the overlying
18 landowner parties are specified in Section 5.1.1 and Exhibit 4 to the judgment. The public
19 water suppliers are not listed in Exhibit 4 but rather are listed with production rights post
20 rampdown only in Exhibit 3 to the judgment. Neither Pre-rampdown production rights nor
21 groundwater rights are listed for the public water producers in the judgment. While pumping
22 numbers for the public water producers are listed in the Phase 4 Statement of Decision, those
23 numbers are total pumping numbers, including return flows from imported water, and do not
24 fairly represent the pre-rampdown native safe yield production right.

25 CONCLUSION

26
27 The court concludes that the public water producers are included in the provisions of
28 Section 8.3. The specification that "during the first two years of the Rampdown Period no

1 *producer* shall be subject to a Replacement Water Assessment . . .” (emphasis added) is
2 unqualified. It does not limit the definition of “producers” to landowner or overlying owner
3 parties. While Section 3.5.26 defines “overlying production rights” as those rights held by the
4 parties listed on Exhibit 4 to the judgment, which includes landowner parties, “producers” is
5 defined as “a party who produces Groundwater.” Section 3.5.30. The court explicitly adopts
6 the production limits pre-rampdown agreed to by the parties in Exhibit 4 as well as the
7 production rights to which each is entitled post-rampdown.

8 Post-rampdown production rights are quantified for the public water producers in
9 Exhibit 3 to the judgment and Section 3.5.28 defining pre-rampdown production as “the
10 reasonable and beneficial use of groundwater,” or the production right, whichever is greater,
11 provides a method for calculating what the annual reduced production should be.

12 Both the Public Water Producers and Clan Keith meter their pumping and clear records
13 of pumping are reflected in the evidence produced for the court. To the extent that imported
14 water is included in the pumping records, evidence of imported water quantities is also
15 available.

16 Section 5.1: provides that “...all the productions rights are of equal priority”
17 (excepting only the Federal reserve rights and the small pumper class).

18 The physical solution scheme is designed to gradually reduce pumping in the valley.
19 All parties suffer the economic pain caused by reduced water rights and the requirement to
20 purchase replacement water above their allocation. The physical solution adopted by the court
21 contemplates that all producers will be reducing water production pursuant to 8.2 and 8.3.

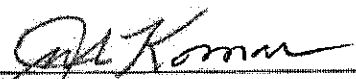
22 No party is penalized if the Public Water Suppliers also have the advantage of the
23 rampdown period. If the Public Water Providers are accorded the five year progressive
24 reduction right, there is no effect whatsoever upon any other party in the case. It neither
25 increases their costs nor affects their ability to pump their production right. If the Public Water
26 Producers are not accorded the right to progressively reduce their pumping over the five year
27 period, and are required to purchase replacement water based on the post-rampdown
28 production quantification the Public Water Producers suffer the penalty alone but no benefit

1 accrues directly to any of the overlying land owners. Under that scenario, water levels remain
2 the same because of the purchased replacement waters and no change occurs in the aquifer
3 (other than the change that will occur with all parties benefitting from the physical solution). It
4 must be emphasized that the court's approval of the physical solution in fact, based upon
5 competent evidence, contemplated that all parties would have the benefit of the 7 year
6 rampdown process and that the physical solution would achieve a balanced aquifer during the
7 specified period. No party objected or provided contrary evidence or argument during the
8 approval hearing.

9 Accordingly, the Watermaster must in developing and approving its rules for
10 implementation of the physical solution accord the benefit to the Public Water Producers
11 moving parties here as well as the Clan Keith party the benefit of Sections 8.1 and 8.2, and 8.3.
12 The provisions of Section 18 and following provide an ample basis for the Watermaster and
13 the Watermaster Engineer, and others to determine the appropriate reduced pumping for both
14 the Public Water Suppliers and Clan Keith.

15 SO ORDERED.

16
17 Dated: February 5, 2018

18 
19 Hon. Jack Komar (Ret.)
20 Judge of the Superior Court
21
22
23
24
25
26
27
28