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10 Trust

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
14

15 ANTELOPE VALLEY
16 GROUNDWATER CASES

17 Included Actions:

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

22 Los Angeles County Waterworks District
23 No. 40 v. Diamond Farming Co., Superior
24 Court of California, County of Kern, Case
25 No. S-1500-CV-254348

26 Wm. Bolthouse Farms, Inc. v. City of
27 Lancaster, Diamond Farming Co. v. City of
28 Lancaster, Diamond Farming Co. v.
Palmdale Water District, 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

**TRIAL BRIEF OF CHARLES TAPIA,
INDIVIDUALLY AND AS TRUSTEE OF
THE NELLIE TAPIA FAMILY TRUST**

[PROVE-UP TRIAL REGARDING
PROPOSED STIPULATED JUDGMENT AND
PHYSICAL SOLUTION]

Date: September 28, 2015

Time: 10:00 a.m.

Place: TBA

21 Charles Tapia, individually and as Trustee of the Nellie Tapia Family Trust (hereinafter
22 “Tapia”), hereby respectfully submits his Trial Brief for the Prove-Up Hearing Regarding
23 Proposed Stipulated Judgment and Physical Solution, as follows:
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I.

INTRODUCTION

CHARLES TAPIA ("Tapia") and the NELLIE TAPIA FAMILY TRUST ("Trust") (collectively "Cross-Defendants") are the owners of real property in Rosamond, California, known by Assessor's Parcel Number 374-020-53-00-6. While Cross-Defendants were purportedly served by publication and their default taken years ago, the default entered against them was set aside in October of 2014. In December of 2014, Cross-Defendants filed a Declaration Regarding Water Usage, setting forth the details of their pumping of water during the years 2011 and 2012. As set forth in that Declaration, and as will be shown at trial, Cross-Defendants are entitled to 534.5 acre-feet of water per year.

This Amended Trial Brief is submitted in order to address information recently discussed with counsel for Los Angeles County Waterworks District No. 40.

II.

TAPIA CROSS-DEFENDANTS' WATER USAGE

A. QUANTITY OF WATER USED IN 2011 AND 2012

While the Tapia Cross-Defendants were not involved in the prior phases of this litigation, it is understood that the sole issue presented at the September 28, 2015 trial is the amount of the non-stipulating overlying owners' pumping during 2011 and 2012. (*See generally, City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224; *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266.) This is a fact-based inquiry, and Cross-Defendants anticipate that there will be little or no legitimate dispute as to the facts presented by Tapia at trial.

Cross-Defendants have primarily grown corn and/or pumpkin crops on their 137.36 acre property. (*See* Ex. "A" [Tapia Dec., ¶5].) Tapia utilizes a single well, Serial No. 111206, Pump Reference No. 25314, to provide water to his crops. (*Id.* at ¶6.) As the electrical meter for that pump is not connected to any other equipment, quantification of the amount of water used during 2011 and 2012 is a rather simple matter in this case—at its normal operating point, the well uses 581 kilowatt-hours per acre-foot of water produced. (*Id.* at ¶9, Ex. "B".) As such, one need only divide the total kilowatt-hours by the 581 kWh per acre-foot to determine the amount of water

1 pumped during a particular time period.

2 In 2011, Cross-Defendants' well pump used a total of 300,609 kWh. (*Id.* at ¶¶7, 12, Ex.
3 "C".) In light of the fact that the pump uses 581 kWh to produce 1 acre-foot of water, it cannot
4 reasonably be disputed that Cross-Defendants pumped 517.4 acre-feet of water in 2011.
5 Similarly, the pump used 320,521 kWh in 2012, which translates to 551.6 acre-feet of water in
6 2012. (*Id.*) As such, during the period in question, Cross-Defendants used an average of 534.5
7 acre-feet of water per year. (*Id.* at ¶14.)

8 B. USAGE OF THE WATER

9 Cross-Defendants anticipate that Cross-Complainant may take the position that the
10 average 534.5 acre-feet has not been, or will not be, put to a reasonable use. While Cross-
11 Defendants contend the party contesting reasonable use has the burden of proof on that issue, the
12 undisputed fact is that Cross-Defendants have used the groundwater to irrigate and grow crops in
13 accordance with accepted agricultural practices. Mr. Tapia never exported or sold any water
14 drawn from his pump.

15 C. ANTICIPATED EVIDENCE FROM OPPOSING PARTIES

16 Cross-Defendants are informed and believe that opposing parties may submit evidence
17 consisting of satellite imagery of Cross-Defendants' property to support the assertion that Mr.
18 Tapia's water usage has been less than the amounts reflected above. However, particularly in
19 light of the prior admission of such hydraulic testing by Southern California Edison in the prior
20 phases of trial, Cross-Defendants submit that the material attached to the Declaration of Charles
21 Tapia is conclusive evidence that Cross-Defendants used an average of 534.5 acre-feet of water
22 per year in 2011 and 2012.

23 III.

24 SETTLEMENT DISCUSSIONS

25 The Court previously instructed that the parties engage in an attempt to meet and confer
26 regarding potentially making Cross-Defendants a party to the proposed settlement. To date, the
27 extent of these negotiations has been a proposal by the liaison committee that Cross-Defendants
28 agree to an allocation of 65 acre-feet per year. While Cross-Defendants understand that a

1 reduction in water usage is necessary, this proposal appears to have been based solely on satellite
2 imagery of Cross-Defendants' property. As discussed above, empirical data—in a format
3 previously admitted in the Phase IV trial—based on Cross-Defendants' actual pumping of
4 groundwater, indicates that Cross-Defendants have historically used over 500 acre-feet per year.

5 Cross-Defendants remain willing to discuss a stipulated allotment of groundwater, but as
6 discussed herein, the proposed 65 acre-feet per year is not a reasonable or proportionate reduction
7 in water usage.

8 IV.

9 **SCHEDULING AND REQUEST FOR NEW DATE CERTAIN FOR TAPIA TO TESTIFY**

10 Prior to the commencement of this trial, discussions were had with Wendy Wang
11 concerning scheduling of Tapia's testimony and submission of documentary evidence by
12 stipulation.

13 In those discussions, it was agreed that Mr. Tapia would be scheduled to testify on
14 October 15, 2015 although dates in the latter part of next week were left open as a possibility.
15 Ms. Wang also agreed to prepare a stipulation regarding authenticity and admissibility of the
16 documentary evidence obtained through discovery pertinent to Tapia so that those documents
17 could all be admitted prior to any testimony occurring.

18 Tapia's counsel did have the opportunity to listen in by courtcall to the testimony of
19 expert witnesses that were called to testify earlier this week concerning water usage by Tapia and
20 other testimony related to water usages.

21 Based upon the understood scheduling of this trial, counsel has not even met with Tapia as
22 yet to discuss his testimony or the exhibits that would be subject to the stipulation between
23 Tapia's counsel and Ms. Wang and had reserved next week to do so.

24 Tapia's counsel will nonetheless endeavor to put together those documents from Tapia's
25 perspective that were to be subject to admission by way of stipulation and upload them this
26 afternoon. Tapia's counsel does not know with the shortness of notice and the understanding as
27 to what was in place as to scheduling, whether or not Tapia personally can even be present
28 tomorrow to testify.

What Tapia's counsel would prefer to do is to submit all the documentary evidence and have it admitted by stipulation, have the opportunity to meet early next week with Tapia to go over his anticipated testimony, and then to have a brief hearing scheduled in the future at such time as is convenient for the court for Tapia to present testimony.

V.

CONCLUSION

Nonetheless, and as discussed above, the undisputed facts demonstrate that Cross-Defendants use an average of 534.5 acre-feet per year for the irrigation of corn and pumpkins. As such, Cross-Defendants respectfully request that the Court find Cross-Defendants are entitled to the reasonable use of that amount of groundwater.

Dated: September 30, 2015

BRUMFIELD & HAGAN, LLP
A Limited Liability Partnership

By:

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