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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER
CASES**

Judicial Council Coordination
Proceeding No. 4408

**PUBLIC WATER SUPPLIERS'
SUPPLEMENTAL POINTS AND
AUTHORITIES IN OPPOSITION TO
THE CLAIM OF RIGHT TO A JURY
TRIAL**

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Dept.: 1

Phase 2 Trial: October 6, 2008
(Hon. Jack Komar)

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A. INTRODUCTION

Certain overlying water producers claim that they are constitutionally entitled to trial by jury of factual issues pertinent to the Court’s conclusions on the basin’s safe yield, the existence of overdraft and, ultimately, whether any public water supplier or suppliers possess prescriptive rights. Those claims are based on cases which deal with adverse possession matters, which are wholly unrelated to the determination of water rights -- namely, the relative priority of parties’ to pump water from the basin.

In response, the Public Water Suppliers¹ have cited cases noting that the core nature of the case (legal or equitable) determines whether a right to a jury trial on any issue tried therein exists. The Court has indicated preliminarily that the case is equitable in nature, the relief sought consisting of declaratory relief which will prioritize water production rights of hundreds of parties and will impose a physical solution which, through injunctions and other orders, will protect those priorities and also protect and preserve the basin as a sustained source of water for all the parties.

The purpose of these supplemental points and authorities is to ask the Court to consider the provisions of Part 3, Chapter 1 of the California Water Code (Water Code sections 2000, *et seq.*) entitled “Reference By Courts of this State,” in ruling on the jury trial issue. As will be made clear below, the Reference process is available in any case filed in this state in which the determination of water rights is sought and that process excludes a jury determination of any fact in issue. Further, the Reference process has been uniformly used and/or sustained against attack in water rights cases, including seminal decisions of the California Supreme Court and is based on the “special” complex and equitable nature of water rights adjudications. The existence and validity of the

¹ The Public Water Suppliers include Los Angeles County Waterworks District No. 40, Rosamond Community Services District, City of Palmdale, Palmdale Water District, City of Lancaster, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water District and California Water Service Company.

Reference process cannot be reconciled with a claimed constitutional right to trial by jury of issues to be determined in a water rights adjudication.

B. THE REFERENCE PROCESS CONTAINED IN THE WATER CODE PROVIDES FOR ISSUES IN A WATER RIGHTS ADJUDICATION TO BE STUDIED AND REPORTED ON BY THE STATE WATER RESOURCES CONTROL BOARD AS A COURT REFEREE AND THEN FINALLY DECIDED BY THE COURT, NOT BY A JURY.

Water Code sections 2000 and 2001 provide the Court the authority to order a reference to the State Water Resources Control Board (“the Board” hereinafter) for the investigation and determination of all issues and physical facts involved in any suit seeking the determination of water rights. The statutory Reference process proceeds (without a jury ever) as follows upon the Court’s making the reference order:

1. The Board conducts an investigation and may hold hearings and take testimony (Water Code § 2010);

2. The Board then issues a report which contains such opinions on the law and facts and such findings of fact and conclusions of law as required by the Court’s order of reference (Water Code §§ 2011 and 2012);

3. Before filing the report with the Court, the Board announces the report in the form of a draft (Water Code § 2013) and mails notice of and a copy of the draft to the parties (Water Code § 2014);

4. The parties then may file objections to the draft report (Water Code § 2015);

5. The Board considers the objections and may conduct a hearing thereon and then files its report with the Court (Water Court § 2016); and

6. The Court then reviews the report and any exceptions thereto filed by the parties, including evidence offered by parties to rebut the report (Water Code §§ 2017, 2018 and 2019) in making its final factual determinations.

This process includes no option for a jury trial on any fact which must be determined.

C. THE REFERENCE PROCESS HAS BEEN HELD TO BE CONSTITUTIONAL AND VALID AND HAS BEEN USED IN LEADING WATER RIGHTS CASES DECIDED BY THE CALIFORNIA SUPREME COURT.

In *Fleming v. Bennett* (1941) 18 Cal. 2d 518, the Reference process was applied in a case which sought to adjudicate and prioritize the water rights of the hundreds of water users in the Susan River Watershed located in Lassen County. The report which was the product of the reference demonstrates the complexity of such a case and the claims to be sorted out by a judgment in equity. The report was described as follows at pps. 525-526:

“The report of the division is comprehensive. It consists of 195 pages of findings and conclusions and as many or more pages of schedules, tables and plates. It deals with and recommends findings with respect to 259 claimed rights of water users in the Susan River watershed. These suggested findings, conclusions and tables treat of the physical facts investigated by the referee. There is also included a general description of the watershed, reports on climate, soil classification, crops, run-off records, the various uses of the water and descriptions of 259 diversion systems and measurements, tabulation and report on supplemental springs and reservoirs, description of methods of irrigation, a discussion and report on losses and accretions in channels and ditches, a chapter devoted to the duty of water, or general irrigation and domestic requirements in the various sections, and a discussion of certain of the allotments compiled in the

schedules or tables. Table 1, comprising 41 closely tabulated sheets, contains specific descriptions of the areas irrigated from the Susan River and its tributaries and the names of the respective owners of such areas. Table 2, comprising 12 sheets, gives a summary of the systems diverting water from the Susan River and its tributaries, the names of the diverters and of the diversions, the acreage irrigated under each diversion, and the total acreage irrigated on each parcel. Other tables give the monthly and seasonal precipitation in the seasons 1900-01 to and including 1934-35, the records of temperatures, dates of killing frosts and snowfalls at Susanville, and the continuous records of daily and monthly discharges and releases in cubic feet per second of Susan River and its tributaries at designated points in various years. Similar tables give estimated daily consumptions, diversions, and rediversions, accretions, and daily water supply. Table 86 gives the estimated crop yields on about 50 typical lands irrigated from the Susan River and its tributaries. Table 87 reports the gross use of water for acreage irrigated from the Susan River and its tributaries during the period of investigation in 1935. Many maps and graphs are included.”

In *Fleming*, the Reference process was attached as being premature because the reference order preceded the filing of defendants pleadings. The Supreme Court responded on pp. 522-523 as follows:

“In actions involving numerous conflicting water rights it has been deemed expedient, both by the legislature and by this court [citations] that in the discretion of the trial court the investigation of the facts be confided to the Division of Water Resources of the Department of Public Works as referee. In such actions the delays incident to the joining of issues by the defendants’ pleadings may not be necessary in order that the court be in position to determine whether expert investigation is required or desirable.

1 It is the statute, and not the defendants' pleadings, which confers
2 jurisdiction upon the court to appoint the referee, and when appointed the
3 referee has the power to enter upon the investigation immediately. Thus, in
4 the present case, the application for the appointment of the referee was
5 made upon the filing of the complaint and on the request of about ninety per
6 cent of the users of the waters involved in the action. No good reason has
7 been suggested why the court should have delayed the appointment of the
8 referee until after the filing of formal pleadings by the defendant users."

9 Certain defendants also claimed that the Reference process violated the state
10 constitution by conferring judicial power on an administrative agency. The Supreme
11 Court rejected that argument, stating at page 523 "[t]he court is given broad discretion as
12 to when and how much of the investigation or of conducting hearings and taking
13 testimony should be referred to the referee. We conclude that the court was acting within
14 lawful authority conferred by the statute when it referred the investigation to the Division
15 of Water Resources immediately after the complaint was filed and before any issues
16 tendered by the complaint were joined by the filing of pleadings by the defendants."

17 The Court also made the following conclusory statement at p. 528:

18 "The case presents no special procedure differing from the ordinary
19 practice and procedure of superior courts in original actions, such as was
20 considered in the case of *Mojave River Irr. Dist. v. Superior Court*, 202
21 Cal. 717 [262 Pac. 724]. As we have noted, the legislature has power to
22 provide for reference in special classes of cases of which the present case is
23 one.

24 It follows that all of the pertinent constitutional safeguards were
25 observed by the legislature in enacting the provisions of section 24 and by
26 the court in the trial of the action. The evidence fully supports the
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judgment, and the order denying the appellants’ motion for a nonsuit was proper.”

While the right to a jury trial was not raised specifically in *Fleming v. Bennett*, the Supreme Court recognized the power of the legislative to provide for a reference (and bench trial) in “special classes of cases,” including water rights determinations.

The Reference process also was employed in the leading case of *City of Pasadena v. City of Alhambra* (1949), 33 Cal. 2d. 908. There, the California Supreme Court noted that: “Every recent major water law decision of this court has expressly or impliedly approved the reference procedure provided by section 24 and has recommended, in view of the complexity of the factual issues in water cases and the great public interests involved, that the trial courts seek the aid of the expert advice and assistance provided for in that section.”

The Supreme Court also cited *Fleming* in making the following comment on the constitutionality of the Reference process:

“In sustaining and approving the reference procedure, it was stated in the *Fleming* case that ‘all of the pertinent constitutional safeguards were observed by the legislature in enacting the provisions of section 24. . . .’ (18 Cal.2d. at p. 528) The opinion did not mention whether section 24 conflicted with article III, section 1, of the Constitution, which provides for the separation of powers, or discuss whether such an order of reference invalidly subjects an executive branch of division and its officers to the control of the judiciary. It was, however, expressly held (18 Cal.2d at pp. 523-525) that section 24 does not provide for the exercise of judicial power by the division, and implicit in the decision is the conclusion that the separation of governmental powers is observed. (*See also, Wood v. Pendola*, 1 Cal.2d 435, 442 [35 P.2d 526].) In effect section 24 provides that the court may appoint the division to act as an investigator and an

expert witness, but there is nothing which authorizes the courts to control
 or regulate, in any particular, the proper functions of the division or the
 manner in which, pursuant to legislative mandate, it shall proceed in
 conducting its examination and making its report. The Fleming case also
 expressly held that section 24 is not unconstitutional and void as a special
 law providing for a variation from the general practice and procedure in the
 superior court in violation of article IV, section 25, of the Constitution. (18
 Cal.2d at p. 528; *cf.*, *Wood v. Pendola*, 1 Cal.2s 435, 442 [35 P.2d 526].)”²


D. CONCLUSION.

The Water Code Reference process concluding with a Court determination of all
 issues has been held valid and constitutional and has been utilized in leading Supreme
 Court cases involving water rights adjudication. The Courts have noted the complex and
 special nature of these adjudications which warrant the legislative process offered as an
 alternative method of fact finding. The very existence of the Reference process and case
 law which supports that process run contrary to certain defendants’ assertion of a right to
 a jury trial to dispose of factual issues in this adjudication.

Respectfully submitted,

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² The Reference process also was utilized in *City of Los Angeles v. City of San Fernando* (1975) 14 Cal 3d 199, 216, a seminal California Supreme Court case in which the distribution of the costs of the Reference was discussed at pp. 296-297.