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LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40

EXEMPT FROM FILING FEES UNDER GOVERNMENT CODE SECTION 6103

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

RELATED CASE TO JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 OPPOSITION TO MOTION TO STAY PROCEEDINGS; DECLARATION OF ERIC L. GARNER IN SUPPORT THEREOF

Date: August 17, 2009
Time: 9:00 a.m.
Dept. Los Angeles Sup. Ct., Dept. 1

I.

INTRODUCTION

A consortium of several, but my no means all, of the parties to these coordinated proceedings (collectively the "Moving Parties") have brought the instant motion seeking a six-month stay of proceedings, or alternatively, a continuance of the trial-setting conference. The reason the Moving Parties give is that such a stay or continuance will facilitate settlement via pending discussions among some of the parties ("principals") to these cases aimed at reaching a proposed physical solution. Los Angeles County Waterworks District No. 40 ("District 40") respectfully opposes a stay or continuance.

Although District 40 favors settlement discussions,[1] including the pending settlement conference with Justice Robie, the Moving Parties' request for stay or continuance by this motion will not facilitate such a settlement. Granting a stay – ironically – will work against reaching a settlement, as the uncertainty of the outcome of an imminent trial is a strong motivator for settlement. Moreover, the Moving Parties have failed to make an adequate showing for a stay or continuance under either of the legal theories they advance for such relief. Accordingly, District 40 respectfully requests the Court deny the Motion for Stay and proceed forward with this case.

II.

ANALYSIS

A number of spokespersons and individual parties have been meeting regularly in a "principals-only" settlement discussion, and from those meetings, the instant motion for stay of the proceedings was developed. While the pursuit of settlement is a worthy goal, under-cutting the Moving Parties' request for a stay in this case is the fact that even if the principals could agree on every issue, such agreement is unlikely to result is a settlement for every party that would obviate the need for trial. The requested stay will instead only worsen the situation in the Basin

[1] In fact, in October 2008, District 40 proposed a framework for settlement that outlined most of the issues that the principals are now discussing. See Decl. of Eric L. Garner, attached hereto, ("Garner Decl.") at 3.

by delaying final adjudication of these matters while the parties continue to overpump and further deplete the Basin. Furthermore, nothing prevents the principals – and all parties for that matter – from continuing their settlement efforts without a stay. Under the circumstances present in this matter, a stay or continuance is not appropriate either under the Court's inherent powers or under Rule of Court 3.1332, and the Moving Parties' request should be denied.

A. The "Principals-Only" Discussions Will Not Obviate the Need for Further Court Proceedings in These Cases and a Stay of Such Proceedings is Not Necessary to Permit those Discussions to Continue

1. The "principals-only" discussions have not resulted in an imminent settlement and even if those discussions do produce an agreement, it will not likely obviate the need for a trial

The sole basis the Moving Parties advance for the requested stay, or alternatively, continuance, of these proceedings is the ongoing "principals-only" discussions toward reaching a settlement by way of a physical solution. Nowhere do the Moving Parties contend, however, that those discussions are close to reaching an actual agreement. The most they state is that "an agreement in concept had been reached on many of the outstanding core deal points . . . ." Decl. of James R. Williams ("Williams Decl.") at ¶ 4 (emphasis added). The Williams Declaration gives some detail on the process that "is contemplated" "going forward" in order to reduce an agreement to a form that those participating can agree to, but notably absent from his Declaration is any statement that any of those steps have occurred. Id. at ¶ 3. In fact, the number of issues to be agreed upon has actually increased over the course of the principals-only meetings. Id. at ¶ 2. While identifying new issues is not necessarily detrimental to settlement talks, nothing in the pending Motion reveals that the "principals-only" discussions would be any closer to resolving this case if the Court had stayed proceedings.

Further, it appears unlikely that within a six-month window of time that the "principals-only" discussions will reach the point of a settlement that resolves this matter and obviates the

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need for a trial, even among those parties that are actually participating in those discussions. Water lawyers are not participating in the substantive discussions over resolving parties' water rights. See Williams Decl. at ¶ 1 (discussions are between only non-attorney stakeholders); ¶ 3 (attorneys to be brought into the process only after consensus is reached on the substantive terms). Of course any settlement by way of stipulated judgment will have to comply with the requirements under Article X, § 2 of the California Constitution, but the water-law attorneys best equipped to structure a settlement to meet those requirements are not participating in the substantive negotiations.

Moreover, if a principals' proposal fails to comply with Article X § 2, the currently-excluded water lawyers will likely be castigated for bringing such legal hurdles to light. Moreover, the "principals-only" discussions are also apparently proceeding without the benefit of any of the experts who have extensively studied the Basin. See Garner Decl. at ¶ 5. Thus, the principals are attempting to agree on matters such as "the total sustainable yield of the Basin" without the participation of experts who have studied just that question. See Williams Decl. at ¶ 1, page 1, line 9.

Even if the "principals-only" discussions do result in an agreement among those participating in them, they still are not likely to result in a settlement that obviates the need for a trial because indispensible parties are not even participating in those discussions. Class counsel have been excluded from the meetings. See Richard Wood's Opp'n to Mot. to Stay, filed July 31, 2009, at 2:17. Nor is the United States participating in those discussions. See Garner Decl. at ¶ 6. Thus, when the principals attempt to come to an agreement on "the manner in which to address the federal reserve rights associated with Edwards Air Force Base," (Williams Decl. at ¶ 1), the party whose rights are being negotiated is not even at the table. Any "agreement" the principals reach on the United States' rights in this matter without the participation of the United States is unlikely to be the last word on the matter. In short, a stay of proceedings to permit the

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"principals-only" discussions to continue without the pressure of a looming trial is unlikely to result in an agreement that will obviate the need for a trial.

2. The "principals-only" discussions are not dependent on a stay

Nor do the Moving Parties contend in their motion that a stay is necessary to permit the "principals-only" discussions to continue. There is no argument that the discussions will dissolve in the absence of a stay. Instead, the Moving Parties request a stay because they "would like to pursue this effort without incurring the ever mounting legal fees necessitated by the current procedural posture and size of this case." See Mot. at 3:14-16. However, much of the ever-mounting legal expense in this proceeding is entirely under the control of some of the Moving Parties, who therefore have the power to stop those costs without staying the action.

3. The costs of a stay outweigh any potential benefits of a stay

A stay of proceedings has its own costs. Prompt resolution of this dispute is necessary for the health of the Basin, and therefore to those that depend on its for their water supply. Until such time as this matter is resolved, parties will continue to overdraft the Basin, worsening the situation. Because not all parties are even participating in the "principals-only" discussions, Court action will still be necessary to adjudicate the Basin even if those participating in the "principals-only" discussions come to an agreement among themselves. A stay of proceedings that only delays that Court action will only harm the Basin.

In addition, hundreds of thousands, if not millions, of dollars have been spent on legal fees and experts preparing for a legal adjudication of this Basin. Causing counsel and the experts to "stand down" by staying proceedings while some of the principals attempt to resolve those issues will only increase costs when counsel and the experts must "gear up" again for trial at the expiration of the stay.

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Finally, granting a stay will work against reaching a settlement. There is no doubt that litigation of this matter has been, and will likely continue to be, expensive. The possibility of avoiding at least some of those costs through negotiation is a powerful motivator toward reaching an agreement. However, staying proceedings reduces that motivation by removing the immanence of trial, and thus those costs. A stay here would not promote settlement, either through the "principals-only" discussions, or a stay of the settlement conference with Justice Robie. The requested stay should be denied.

B. The Moving Parties have Failed to Show Adequate Legal Grounds for the Requested Stay or Continuance

The Moving Parties posit two legal bases for the requested stay or continuance: the Court's inherent power to stay proceedings in order to promote judicial Efficiency, and California Rule of Court 3.1332. Under the circumstances of this case, such relief is not appropriate under either authority.

1. The requested stay is not in the interests of justice and will not promote judicial efficiency

The Court has inherent power to stay proceedings if doing so will promote judicial efficiency. See Freiberg v. City of Mission Viejo, 33 Cal. App. 4th 1484, 1489 (1995). The requested stay here will not promote judicial efficiency, however.

The Moving Parties base their argument solely on the fact that the trial court in City of Barstow v. Mojave Water Agency, 23 Cal. 4th 1224 (2000) granted such a stay, and the parties in that case were able to negotiate a physical solution. The facts of that case reveal, however, that even success in negotiating a physical solution does not necessarily equate to promoting judicial efficiency, because even a negotiated physical solution did not obviate the need for trial. Even after the parties there reached a physical solution, many did not agree to be bound by it. See 23

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Cal. 4th at 1236. Rather, a "lengthy" trial was still necessary to determine the rights of the parties who did not stipulate to be bound by the negotiated physical solution. Id. at 1236.

Even those who did stipulate to be bound by the physical solution in City of Barstow had to participate in that lengthy trial, presenting evidence on hydrogeology to establish overdraft and on the economic development of the area during the overdraft period. Id. at 1236-37. Thus, even though proceedings were stayed, it did not obviate the need for trial, even for those parties that agreed to be bound by the physical solution. The Moving Parties' own authority illustrates that a stay of proceedings will not promote judicial efficiency. The Court should not use its inherent authority to stay proceedings where doing so will not promote judicial efficiency.

2. A trial continuance pursuant to rule of court 3.1332 is not appropriate under the circumstances in this matter

Alternatively, the Moving Parties request the Court continue the upcoming trial-setting conference for six-months under California Rule of Court 3.1332. The basis for this requested continuance is the same as for the stay – to permit continuation of the "principals-only" discussions without the pressure of the upcoming trial.

Continuances of trial are expressly disfavored under Rule 3.1332(c). To obtain a continuance notwithstanding this disfavor, the Moving Parties must make an affirmative showing of "good cause" for their requested continuance. See Cal. R. Ct. 3.1332(c). They fail to address this point in their motion. Indeed, none of the enumerated examples of "good cause" within the Rule itself are present here. There is no demonstrated unavailability of any witness, party, or counsel, nor substitution of counsel requiring a continuance in order to permit a fair trial. The Moving Parties do not assert that the addition of new party requires a continuance. They do not claim an inability to obtain evidence, nor do they assert that any unanticipated change in the status of the case requires a continuance.

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Rather, the only basis the Moving Parties assert in favor of the continuance is that moving forward with this case will be expensive, which the Moving Parties assert shows that "the interests of justice are best served by a continuance" under Rule 3.1332(d)(10). As discussed above, the costs of staying this case exceed the costs of proceeding. These additional costs not only mitigate the extent to which a continuance or stay may serve the interests of justice under Rule 3.1332(d)(10), but also constitute substantial prejudice weighing against a continuance under Rule 3.1332(d)(5). Moreover, staying the case to delay the costs of trial will only likely serve to remove all parties' motivation to reach an agreement. A continuance under Rule 3.1332 is not appropriate.

III.

CONCLUSION

The requested stay or continuance in this case will neither further the interests of justice nor promote judicial efficiency. Settlement discussions in this case aimed at achieving an agreement from all involved are valuable, and District 40 is in favor of settlement discussions. But a stay of these proceedings is not necessary to allow that to happen. The requested stay or continuance can only increase the ultimate cost of the proceedings in this case, allow further mining of the groundwater, and will only delay – not eliminate – the need for a trial in this matter. Accordingly, District 40 respectfully requests the Motion for Stay of Proceedings be denied.

Dated: August 4, 2009

Respectfully submitted,

BEST BEST & KRIEGER LLP

By _____

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DECLARATION OF ERIC L. GARNER

I, Eric L. Garner, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a partner of Best Best & Krieger, LLP, attorneys of record in the above-captioned matter for Los Angeles County Waterworks District No. 40 ("District 40"). I make this declaration in support of District 40's Opposition to the Motion to Stay Proceedings brought by the City of Lancaster, Palmdale Water District, Diamond Farming, Bolthouse Farms, AWGA, AVEK, and several other parties, primarily overlyer landowners, to these coordinated cases (collectively, the "Moving Parties"). I have read the Moving Parties' Motion to Stay Proceedings and the Declaration of James R. Williams in support thereof.

2. The facts set forth below are based on my personal knowledge, except for those statements made on information and belief, and if called and sworn as a witness, I could and would competently testify thereto.

3. In October 2008, District 40 proposed a framework for settlement that outlined most of the issues that James R. Williams identifies in his Declaration as those the "principals" are now discussing.

4. I am aware that settlement negotiations, commonly called the "principals-only" meetings, have been occurring over the last several months. Both I and my partner, Jeffrey Dunn, however, have been expressly excluded from the "principals-only" meetings because we are attorneys. Further, it is against the professional Code of Responsibility for an attorney to speak to a represented party without his or her attorney present or without express consent of the represented party. It is my understanding and belief that those permissions have been withheld with respect to the "principals-only" meetings.

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5. I am informed based on my conversations with those having knowledge of the "principals-only" meetings, and on that basis believe, that the experts retained in this case on various technical issues are not participating in the "principals-only" meetings.

6. I also am informed based on my conversations with those having knowledge of the "principals-only" meetings, and on that basis believe, that the United States also is not participating in the "principals-only" meetings.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 4, 2009, at Riverside, California.

ERIC L. GARNER

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PROOF OF SERVICE

I, Lynda A. Kocis, 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, 3750 University Avenue, 4th Floor, Riverside, California 92501. On August 4, 2009, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 OPPOSITION TO MOTION TO STAY PROCEEDINGS

☒ 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 4, 2009, at Irvine, California.

Lynda A. Kocis

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