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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding

**ANTELOPE VALLEY
GROUNDWATER CASES**

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.

Wm. Bolthouse Farms, Inc. v. City of
Lancaster

Diamond Farming Co. v. City of
Lancaster

Diamond Farming Co. v. Palmdale Water
District

Case No. 105 CV 049053
Judicial Council Coordination Proceeding
No. 4408

Hon. Jack Komar

**CITY OF LOS ANGELES'
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
RIGHT TO JURY TRIAL**

Riverside County Superior Court
Lead Case No. RIC 344436
Case No. RIC 344668
Case No. RIC 353840

Los Angeles Superior Court
Case No. BC 325201

Kern County Superior Court
Case No. S-1500-CV-254348

Date: November 25, 2008
Santa Clara Superior Court
Department 17

1 In a Case Management Statements filed November 21, 2008 (CMC Statement), a
2 number of parties¹ requested a jury trial on all elements of causes of action including claims of
3 prescription. A reading of the CMC Statements suggests that the only portion of the action as to
4 which jury trial is not requested is the equitable issue of a potential physical solution and related
5 management. In a comprehensive groundwater adjudication such as the instant case, however, it
6 is not feasible to tease out the “equitable” issues from “legal” issues; they are inextricably
7 intertwined, and both depend on facts and determinations in this action that have already been
8 ruled upon by the Court following submission of evidence in the first two phases of the trial.

9 Even if the landowners had the right to a jury trial on some issues or claims at the
10 outset of the trial, they have waived that right by their participation in the first two phases on the
11 merits of the action without objection. It would be prejudicial to the other parties, inefficient,
12 burdensome to the potential jury panel, and detrimental to the orderly conduct of the adjudication
13 to require the remainder of the case be tried before a jury at this stage of the litigation.

14 The constitutional right of a trial by jury is a valuable privilege
15 derived from the wholesome influence of Magna Carta, and should
16 be preserved and enforced in all its efficacy. This right, however,
17 should not be used as a means of delaying or obstructing the regular
18 course of litigation. This privilege should be exercised with due
19 diligence.

20 (*Deberry v. Cavalier* (1931) 113 Cal.App. 30 at 33.)

21 Although this adjudication is proceeding in separate “phases” of “trial,” it is
22 nevertheless a single consolidated case in which trial has already commenced. Landowners have
23 not exercised due diligence in requesting a jury trial, have not preserved their record of any such

24
25 ¹ / Bolthouse Properties, LLC; Wm. Bolthouse Farms, Inc.; Diamond Farming Company; Crystal Organic
26 Farms, Inc.; A.V. United Mutual Group; White Fence Farms Mutual Water Company, Inc.; Antelope Valley
27 Groundwater Agreement Association (AGWA); Service Rock Products Corp.; Sheep Creek Water Company; filed a
28 Case Management Statement in which Wagas Land Company LLC joined, and Richard A. Wood and the Small
Pumpers Class. Tejon Ranch Corp., also filed a demand for jury trial on November 21, 2008, in which Gertrude J.
Van Dam, Delmar D. Van Dam, Craig Van Dam and Gary Van Dam joined, and Plaintiff Willis filed a similar Case
Management Statement asserting the right to a jury trial. These parties are all collectively referred to herein as
“Landowners.”

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1 request, and have therefore waived their right to try this case before a jury. Their request, at this
2 late date in the proceedings will produce only delay, confusion, and frustration of the orderly
3 progression of this litigation.

4 The Code of Civil Procedure provides that the right to a jury trial is waived by
5 failure of the party seeking jury trial to announce that a jury is required “at the time the case is
6 first set for trial, or within five days thereafter. (Code of Civil Procedure § 631(d)(4) (emph.
7 added.)²

8 In this case, the Court has tried two of the issues essential to a determination of the
9 landowners’ water rights. In Phase I of this case, the identification and extent of the groundwater
10 basin in which the landowners assert rights was tried to the Court without objection. In Phase II,
11 again without objection by the landowners, the determination of any sub-basins in which the
12 landowners might assert separate groundwater rights was tried before the Court. Fifty-two pages
13 of reporter’s transcript document detailed argument before the Court concerning *in limine*
14 motions and the conduct of the Phase II trial, but not one word was said concerning a jury trial.
15 (6 Oct RT 1-52.) No party requested a jury trial at any time prior to the hearing of evidence, and
16 all parties now requesting a jury trial fully participated in the Phase II trial to the Court.

17 As established by the state’s Supreme Court in *Taylor v. Union Pac. R. Corp.*
18 (1976) 16 Cal.3d 893,

19 [I]t is well established that ‘. . . a party cannot without objection try
20 his case before a court without a jury, lose it and then complain that
21 it was not tried by jury. (Citation.)’ (*Pink v. Slater* (1955) 131
22 *Cal.App.2d* 816, 817, 281 P.2d 272, 273; see *Tyler v. Norton*
(1973) 34 *Cal.App.3d* 717, 722, 110 *Cal.Rptr.* 307; *De Castro v.*
Rowe, supra, 223 *Cal.App.2d* 547, 552, 36 *Cal.Rptr.* 53; *Glogau v.*

23 ²/ § 631. (a) The right to a trial by jury as declared by Section 16 of Article I of the California Constitution
24 shall be preserved to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d).
(d) A party waives trial by jury in any of the following ways:
25 (1) By failing to appear at the trial.
26 (2) By written consent filed with the clerk or judge.
27 (3) By oral consent, in open court, entered in the minutes.
28 (4) By failing to announce that a jury is required, at the time the cause is first set for trial, if it is set upon notice or
stipulation, or within five days after notice of setting if it is set without notice or stipulation;
(5) By failing to deposit with the clerk, or judge, advance jury fees as provided in subdivision (b);
(6) By failing to deposit with the clerk or judge, at the beginning of the second and each succeeding day’s session,
the sum provided in subdivision (c).

1 Hagan (1951) 107 Cal.App.2d 313, 316, 237 P.2d 329.) As stated in
2 the recent Tyler case, wherein defendants proceeded to try the case
3 before a judge without objecting to the absence of a jury,
 'Defendants cannot play 'Heads I win, Tails you lose' with the trial
 court.' (34 Cal.App.3d p. 722, 110 Cal.Rptr. p. 309.)

4 Further, once a jury trial has been waived, the waiver cannot be withdrawn except in the
5 discretion of the trial court. (*Taylor v. Union Pac. R. Corp.* (1976) 16 Cal.3d 893, 898.)

6 The *Taylor* decision was expressly upheld two years later in another case
7 involving similar "forum shopping." In *Nork v. Gonzales* (1978) 20 Cal.3d 500, the Court
8 reiterated its disapproval of tactical efforts to change the decision-making horse in mid-stream. In
9 that case, defendant Nork had waived a jury trial. Another party had requested a jury and paid the
10 jury fees, but part way through the trial, the Court noted that the issues being tried had no relation
11 to the party paying for the jury, and that party then also waived its right to jury trial. Thereafter,
12 before the jury was officially discharged (but out of its presence), all parties argued the disputed
13 issues to the court, after which defendant Nork unsuccessfully sought relief from his prior waiver.
14 On appeal, Nork alleged that his right to a jury trial had been wrongfully abridged. The Supreme
15 Court noted all the circumstances, and disagreed, upholding the lower Court's ruling. It
16 observed:

17 Nork's belated motion raised the suspicion that Nork's counsel
18 sensed that the judge was about to rule against them - as indeed he
19 did shortly after denying Nork's motion for relief from jury waiver.
 Apparently Nork's counsel merely wished to reargue the special
 defenses before a different, hopefully more receptive, trier of fact.

20 (*Nork v. Gonzales* (1978) 20 Cal.3d at 505.) It added, further,

21 In the language of the Court of Appeal in *Cloud v. Market Street*
22 *Ry. Co.* (1946) 74 Cal.App.2d 92, 104 "the case presented was no
23 different from any other in which a plaintiff after first waiving a
24 jury because he had decided that it was preferable to try his case to
25 a court, afterwards changed his mind and sought relief from his
 waiver. If the denial of the motion under such circumstances is an
 abuse of discretion, then every litigant who changed his mind about
 a jury trial after first waiving one would equally be entitled to be
 relieved upon a like motion."

26 (*Nork v. Gonzales, supra* at 508.)

27 Even where a party has previously made known to the Court their desire for a jury
28 trial, the right to jury trial is waived where the party proceeds to trial before the Court without

1 formal objection. In *Frazure v. Fitzpatrick* (1943) 21 Cal.2d 853, appellant had filed a
2 counterclaim and “deposited jury fees and made a written request for jury trial in advance of the
3 trial date and in due form.” In that case proceeded first on the equitable suit before the
4 counterclaim was heard. Appellant’s attorney then proceeded without objection to put on his
5 evidence relating to the counterclaim, which was tried before the court. On appeal, appellant’s
6 contention that he had been improperly deprived of a jury trial was rejected, the appellate court
7 noting, “

8 Under the circumstances, it must be held that appellant waived his
9 right, if any he had, to a jury to hear that phase of the case, and he
 cannot now complain.


10 (*Frazure v. Fitzpatrick, supra*, at 861.)

11 As observed by the Supreme Court in *Taylor*, “A party must preserve his record.”
12 (*Taylor, supra*, at 898.) In this complicated, multi-phased adjudication of the Antelope Valley,
13 the Landowners have not preserved their record. Having proceeded to trial before the Court,
14 without objection, they must be deemed to have waived their right to jury trial.

15 Dated: December 31, 2008

16 ROCKARD J. DELGADILLO, City Attorney
17 Richard M. Brown, Senior Assistant City Attorney for
 Water and Power

18 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
19 A Professional Corporation

20 By 
21 Janet K. Goldsmith
22 Attorneys for Defendant CITY OF LOS ANGELES


PROOF OF SERVICE

I, Lorraine Lippolis, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On December 31, 2008, I served a copy of the within document: CITY OF LOS ANGELES' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO RIGHT TO JURY TRIAL via electronic posting to the Santa Clara Superior Court E-Filing website, <http://www.scefiling.org/cases/casehome.jsp?caseId=19>."

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 31, 2008 at Sacramento, California.


Lorraine Lippolis