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Attorneys for Tejon Ranchcorp

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding Special Title (Rule 1550(b)))	Judicial Council Coordination Proceeding No. 4408
)	
ANTELOPE VALLEY GROUNDWATER CASES)	Lead Case No. BC 325 201
)	_____
)	
Included Actions:)	Santa Clara Case No. 1-05-CV-049053
Los Angeles County Waterworks District No. 40 v.)	Assigned to Hon. Jack Komar
Diamond Farming Co., Superior Court of California,)	
County of Los Angeles, Case No. BC 325 201;)	OBJECTIONS OF TEJON
)	RANCHCORP TO PROPOSED
Los Angeles County Waterworks District No. 40 v.)	STATEMENT OF DECISION RE
Diamond Farming Co., Superior Court of California,)	PHASE III TRIAL
County of Kern, Case No. S-1500-CV-254-348;)	
)	
Wm. Bolthouse Farms, Inc. v. City of Lancaster,)	
Diamond Farming Co. v. Lancaster, Diamond Farming)	
Co. v. Palmdale Water Dist., Superior Court of)	
California, County of Riverside, Case No. 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 391869)	
)	

1 Tejon Ranchcorp (Tejon) submits the following objections to the proposed Statement of
2 Decision Re Phase III Trial (SOD) submitted by the Public Water Suppliers (PWS) on June 6, 2011.

3 **1. Scope of Phase Three Trial.**

4 According to the Court's November 18, 2010 pre-trial order and numerous discussions with
5 counsel, the only issues to be decided in the Phase Three trial are (a) *current* safe yield, (b) whether
6 the aquifer is *currently* in overdraft. The order provides at page 3, lines 19 through 23:

8 The trial will commence on January 4, 2011 . . . to hear evidence of
9 the **safe yield** of the Antelope Valley aquifer and to further hear
10 evidence as to whether the aquifer is in a state of **overdraft** such that
11 the court should exercise equitable powers to protect the aquifer
12 from detriment caused by any such overdraft. (Emphasis added.)

13 Likewise, the Tentative Decision Phase Three Trial (Tentative Decision) states at page 2, lines 15
14 through 17:

15 The first issues to be decided in the declaratory relief cause of action
16 are the issues of safe yield and overdraft. The remaining causes of
17 action and issues are to be tried in a subsequent phase or phases.

18 As discussed below, historic safe yield and overdraft, and quantification of native safe yield,
19 supplemental safe yield and return flows are beyond the scope of the Phase Three trial.

20 **2. There is No Evidence To Support a Factual**
21 **Finding of Subsidence in the West Basin.**

22 The Tentative Decision states at page 6, lines 1 through 2:

23 The physical evidence establishes that there was significant
24 subsidence occurring **throughout the valley** ranging from two to six
25 feet or more in certain areas of the valley . . . (Emphasis added.)

26 Likewise, the SOD states at page 4, lines 24-26:

27 The physical evidence establishes that there was significant
28 subsidence occurring **throughout the Antelope Valley Adjudication**
Area ranging from two to six feet or more in certain areas . . ."
(Emphasis added.)

1 However, no witness testified that subsidence, significant or otherwise, has occurred or is occurring
2 throughout the valley. The PWS's experts, Joe Scalmanini and Mark Wildermuth, testified that
3 subsidence was limited to those areas within the Antelope Valley Area of Adjudication (AVAA)
4 depicted on Scalmanini Exhibit 20, and Wildermuth Exhibit 57. There is no evidence, oral
5 documentary or otherwise, of subsidence in that portion of the AVAA lying westerly of the Bedrock
6 Ridge which is identified in Exhibit D-8 as the West Antelope Valley Area. The SOD should be
7 revised to state as follows:

8
9 The physical evidence establishes that there was significant
10 subsidence occurring in some areas of the Antelope Valley
11 Adjudication Area ranging from two to six feet or more in the
Lancaster and Palmdale areas . . ."

12 **3. There Is No Evidence To Support A Factual**
13 **Finding That Extractions From The AVAA**
14 **Exceeded Recharge for More Than 50 Years.**

15 The Tentative Decision states at page 5, lines 22 through 23:

16 Thus, the Antelope Valley adjudication area has been in a state of
17 overdraft for **more than 50 years** based on estimates of extraction
and recharge . . . (Emphasis added.)

18 Likewise, the SOD states at page 4, lines 17 through 18:

19 Thus, the Antelope Valley Adjudication Area has been in a state of
20 overdraft for **more than 50 years** based on estimates of extraction
21 and recharge . . . (Emphasis added.)

22 The PWS's expert Mark Wildermuth testified that extractions did not exceed recharge for 21 of the
23 51 year base period. Specifically, Mr. Wildermuth testified to a positive change in storage in the
24 AVAA for the time periods 1979-1985 (+32,000 af), 1985-1992 (+25,000 af) and 1992-1998
25 (+210,000 af). (See, e.g., Wildermuth Exhibits 49, 50, 51, 55.) Historic overdraft is beyond the
26 scope of the Phase Three trial and should be deleted. Alternatively, if the Court accepts Mr.
27 Wildermuth's testimony, and does not delete the reference to historic overdraft, the SOD should be
28

1 amended to state:

2 Thus, the Antelope Valley Adjudication Area has been in a state of
3 overdraft in 30 years of the 51 year base period based on estimates of
4 extraction and recharge . . .

5 **4. Determination of Native Safe Yield, Supplemental**
6 **Safe Yield, and Return Flows Is Beyond The Scope**
7 **of The Phase Three Trial.**

8 As discussed above, according to the Court's November 18, 2010 pre-trial order, numerous
9 discussions with counsel, and the Tentative Decision, the only issues to be decided in the Phase
10 Three trial were (a) current safe yield, (b) whether the basin is currently in overdraft. All other issues
11 were reserved for subsequent trial phases. The SOD, however, attempts to resolve issues not before
12 the Court and states at page 8, lines 6 through 19:

13 Out of a total safe yield of 110,000 acre feet annually, the
14 Court finds, by a preponderance of the evidence, the native safe yield
15 is 82,000 acre feet per year and the supplemental safe yield is 28,000
16 acre feet annually. The native safe yield is the amount of precipitation
17 that recharges the Basin. The native safe yield is the total of the long-
18 term average annual natural recharge to the Basin in the amount of
19 60,000 acre feet, and the long term average annual return flows
20 attributable to pumping the native recharge in the amount of 22,000
21 acre feet.

22 Supplemental safe yield is the amount of imported water (i.e.
23 State Water Project water) that recharges the Basin, plus the return
24 flows from such water after it is pumped and re-applied to municipal
25 and industrial or agricultural use. (See Scalmanini Exhibits 94 and
26 95.) The Court finds the supplemental safe yield of the Basin is
27 28,000 acre feet annually, based on estimated return flow percentages
28 of 28.1% for municipal and industrial use, and 25% for agricultural
use. (See Scalmanini Exhibits 94 and 95.) The Court finds that all
subsequent pumping of return flows are subject to the respective
percentages as shown by Scalmanini Exhibit 95.

25 The Court made no findings regarding native safe yield, supplemental safe yield, or long term
26 average annual return flows to the AVAA. Indeed, evidence of the amount of imported water,
27 recycled water and return flows was admitted only for the purpose of establishing the current total
28

1 safe yield of the aquifer. These proposed findings are not relevant to any issue in the Phase Three
2 trial, not supported by the evidence, and the proposed paragraphs should be deleted in their entirety.

3 **5. The SOD Improperly Attempts to Modify the Tentative**
4 **Decision and This Court's November 6, 2008 Order.**

5 On November 6, 2008 the court entered an Order After Phase Two Trial on Hydrologic
6 Nature of Antelope Valley (Phase Two Order) determining what parts of the AVAA were hydro
7 logically connected for adjudication purposes, stating:

8 The affect of the hydrologic connection on the rights of the
9 parties to the litigation cannot be determined at this stage of the
10 proceedings. There are multiple claims to be adjudicated in this case,
11 including . . . claims that portions of the basin should be treated as a
12 separate area for management purposes in the event a physical
solution to water use is established among other issues and claims.
(Phase Two Order page 3, lines 20-25.)

13 Accordingly, the Tentative Decision states at page 4, lines 11 through 23:

14 The location of the Antelope Valley adjudication area
15 boundaries was the subject of the Phase One and Two trials in this
16 matter. The Court defined the boundaries of the valley aquifer based
17 upon evidence of hydro-conductivity within the aquifer. If there was
18 no hydro-conductivity with the aquifer, an area was excluded from
19 the adjudication. The degree of hydro-conductivity within the
20 Antelope Valley adjudication area varies from area to area. Some
21 areas seemingly have fairly small or nominal hydro-conductivity but
22 must be included in this phase of the adjudication. Pumping in those
23 areas may be shown to have *de minimus* effect on other parts of the
24 aquifer while pumping in other areas within the basin appears to
25 have very large impacts on adjacent parts of the basin. All areas were
26 included within the adjudication area because they all have some
27 level of hydro-conductivity, some more and some less. How to deal
28 with those differences is ultimately a basin management decision that
is well beyond the scope of this phase of trial.

The SOD includes similar, but not identical language on page 3, lines 8 through 19.

The Tentative Decision states at page 9, lines 1 through 6:

Therefore, assigning a safe yield number (what quantity of
pumping from the basin will maintain equilibrium in the aquifer)

may require different numbers for different parts of the aquifer. No attempt has been made in this phase of trial to define geological differences in the valley that would justify safe yield numbers for different parts of the valley in light of the decision in Phase Two regarding conductivity (the Phase Two trial focused on hydroconductivity for purposes of determining necessary parties to the action). (Emphasis added.)

The PWS's completely rewrote this part of the Court's decision in an attempt to redefine the Phase Two Order and eliminate future consideration of different levels of pumping in different parts of the aquifer based on geological differences. The SOD states at page 7, lines 22 through 25:

Therefore, different areas of the Basin may require different levels of pumping in order to maintain equilibrium. No attempt has been made in this phase of trial to define geological differences in the Basin that would justify different pumping regimes for different parts of Antelope Valley as a result of the decision in Phase Two regarding hydraulic connectivity.

The SOD should be revised to be consistent with the Tentative Decision and this Court's November 6, 2008.

6. Conclusion.

For the reasons discussed herein, the Court should direct the PWS's submit a revised statement of decision consistent with the scope of the Phase Three trial, the Phase Two order, the evidence, and the Court's Tentative Decision.

Dated: June 20, 2011

KUHS & PARKER

By /s/ Robert G. Kuhs

Robert G. Kuhs, Attorney for Tejon


PROOF OF SERVICE

I, Lidia E. Luna, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On June 20, 2011, I caused the foregoing document(s) described as **OBJECTIONS OF TEJON RANCH CORP TO PROPOSED STATEMENT OF DECISION RE PHASE III TRIAL** to be served on the parties in this action, as follows:

- (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: www.scefiling.org regarding the Antelope Valley Groundwater matter.
- () (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:
- () (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- () (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- () (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Lidia E. Luna