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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. 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

Judicial Council Coordination No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to Hon. Jack Komar

TRIAL SETTING CONFERENCE
STATEMENT OF TEJON RANCHCORP
AND GRANITE CONSTRUCTION CO.

Date: July 29, 2013
Time: 9:00 a.m.
Dept: 1 (Los Angeles)

1 TEJON RANCHCORP (Tejon) and GRANITE CONSTRUCTION CO. (Granite) submit the
2 following trial setting conference statement.

3 I. INTRODUCTION

4 The court has asked each party to comment on the issues to be litigated in Phase 5. Initially the
5 court has suggested that the next phase of trial should include claims of prescription. However, Tejon
6 and Granite submit that there are undecided Phase 4 issues which must be resolved in advance of the
7 jury trial on prescription; namely (a) Woods Class groundwater pumping for 2011 and 2012, (b)
8 historical safe yield and the presence or absence of overdraft for each year during the claimed
9 prescriptive period beginning in 1951, (c) ownership and historical quantities of return flows from
10 imported water, and (d) whether the court should use its equitable power immediately to enjoin
11 appropriations in excess of the current safe yield to protect the aquifer and minimize subsidence caused
12 by intense pumping by the municipal water suppliers ("Appropriators") appropriating groundwater
13 within the Lancaster/Palmdale area of the Antelope Valley Area of Adjudication (AVAA). The court
14 should also consider bifurcating the prescription trial by sub-basin.

15 II. PRIOR TRIAL PHASES

16 In Phase 1 the court determined the boundary of the AVAA. The court determined in Phase 2
17 that the water bearing formations within the AVAA are hydrologically connected and constitute one
18 aquifer (Aquifer), but did not determine the "nature and extent of the hydrologic connectivity of water
19 within various portions of the aquifer." (Phase 2 Order.) In Phase 3 the court determined that (1) the
20 Aquifer, as a whole, is currently in a state of overdraft, and (2) the current safe yield of the Aquifer is
21 conservatively estimated at 110,000 acre foot per year (AFY). The court has not yet determined the
22 historical safe yield or presence of overdraft for each year during the claimed prescriptive period of 1951
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1 through November 2004. Without such determinations, the court cannot instruct the jury as to whether
2 the Appropriators are pumping surplus waters.

3 Most recently, the court determined in Phase 4 each party's groundwater pumping for years 2011
4 and 2012, exclusive of the Woods Class. In sum, even without the Woods Class pumping data, the
5 groundwater extractions exceed the safe yield of 110,000 acre-feet per year. The court must decide
6 whether to try substantive issues or use its equitable powers to protect the Aquifer and minimize
7 subsidence by immediately enjoining further appropriation of the scarce groundwater resources within
8 the AVAA.
9

10 There are many issues that need to be resolved and the challenge is to identify issues that can be
11 logically “bundled” and efficiently litigated in the next phase. For example, the court should avoid, if
12 possible, bundling factual issues to be resolved by the court with factual issues to be resolved by a jury.¹
13 And, where possible, the court should defer the resolution of issues that may become moot based upon
14 the resolution of other issues.
15

16 **III. SOME REMAINING ISSUES**

17
18 In light of the foregoing, some of the issues that remain to be resolved may be stated as follows:²

19 **A. Return Flows From Imported Water.**

20 1. Who has the right to recapture and use return flows from
21 imported water; the party responsible for the importation, the State Water
22 Project contractor who facilitates the importation, the party purchasing the
23 water, the party who put the water to reasonable beneficial use, or some
24 other person? (See *City of Los Angeles v. City of San Fernando* (1975) 14
25

26 ¹ Tejon and Granite demand a jury trial on all issues relating to the Appropriators' claims prescription
27 claims.

28 ² The issues are listed without regard to their relative importance or the sequence in which they should
be adjudicated.

1 Cal.3d 199, 261 [Return flows from imported water belong to the party
2 whose "expenditures and endeavors" bring "into the basin water which
3 would otherwise not be there."].)

4 2. Has any party's right to recapture return flows from
5 imported water been lost through nonuse or abandonment?
6

7 3. What lag time applies to each party's use of imported
8 water?

9 4. What quantity of return flow is augmenting the Aquifer
10 annually during the prescriptive period for each party?
11

12 **B. Sub-Areas and Sub-Basins.**

13 5. Are there discreet areas of the vast AVAA that should be
14 adjudicated separately? For example, should the West Antelope Valley
15 Basin (area west of the Bedrock Ridge), that has not been historically over
16 drafted, has not suffered subsidence, and is miles from the Appropriators'
17 pumps, be adjudicated separately from the Central Basin which has
18 suffered drawdown and subsidence caused by over-pumping by the
19 Appropriators' massive municipal water pumps?
20

21 **C. Prescription.**

22 6. What is the operative five year time period between 1951
23 and 2004 for analyzing prescriptive claims?
24

25 7. If the court allows the PWS's prescription case to proceed
26 without further defining the prescriptive period, then the court must first
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1 determine safe-yield, annual overdraft, and annual return flows for each
2 year between 1951 and 2004?

3 8. Did the 1999 filing by Crystal Organics and Grimmway toll
4 the statute of limitations for prescription as to all landowners in the
5 AVAA, or are there multiple tolling dates for multiple parties. If there are
6 multiple tolling dates, should the prescription trial be bifurcated for
7 efficient trial management?
8

9 9. Has any appropriator, such as Los Angeles County
10 Waterworks District 40 (WD40), established any rights by prescription,
11 and, if so, which Appropriators, what amounts and when?
12

13 10. If an Appropriator has established a prescriptive right, what
14 was the safe yield of the Aquifer during the prescriptive period?
15

16 11. Is WD40 or any other Appropriator estopped to assert any
17 claim of prescription because of its past conduct?
18

19 12. Can a claim of prescription based on California law
20 diminish rights established under Mexican law and recognized by patent
21 issued by the United States under the Act of 1851?
22

23 13. Has any prescriptive right been lost through nonuse?
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25 14. How is Part 5 (commencing with section 4999) of Division
26 2 of the Water Code to be applied, if at all?
27

28 15. Are the rights and defenses of the overlying landowners to
be determined on an ownership basis, a parcel-by-parcel basis, or some
other basis?

1 16. Is the defense of self-help determined on a parcel-by-parcel
2 basis, party basis, basin-wide basis, regional basis or some other basis?

3 17. Can the rights of dormant overlying landowners, such as
4 the Willis Class, be lost to prescription? If not, is dormancy determined
5 on a parcel-by-parcel basis?
6

7 18. Whether the arcane concept of prescription should be
8 abolished as a matter of public policy or declared unconstitutional in the
9 groundwater context, since it conflicts with article 10, section 2, of the
10 California Constitution and promotes, rather than reduces, harm to the
11 Aquifer.
12

13 19. Has any Appropriator effected a “take” of any water rights
14 and, if so, which Appropriator, whose water rights have been or are being
15 taken, and what is or are the amounts of just compensation and attorney’s
16 fees?
17

18 **D. Appropriative Rights.**

19 20. During what period was there surplus water in the Basin?

20 21. Has any party established an appropriative right to surplus
21 water from the Basin, and if so, when?
22

23 **E. Waste.**

24 22. To what extent, if any, has water extracted from the
25 Aquifer been wasted within the meaning of article 10, section 2, of the
26 California Constitution and what is the effect of any such waste on the
27 claims of the parties in the AVAA?
28

1 **F. Quantification of Water Rights.**

2 23. Is it appropriate to quantify the rights to extract water from
3 those portions of the Aquifer, such as the West Antelope Valley Basin,
4 where there is no indication of overdraft, there are no appropriators, and
5 the extractions therein have no effect on water levels in the balance of the
6 Aquifer? (See, e.g., *Tehachapi-Cummings County Water District v.*
7 *Armstrong* (1975) 49 Cal.App. 992, 1000-1002.)

9 **IV. ANALYSIS**

10 **A. Return Flows.**

11 Various parties, including many of the Appropriators claiming prescription, have asserted rights
12 to return flows from imported water. It is axiomatic that a party asserting prescription must be deemed
13 to have lawfully pumped its own water first, before pumping adversely to the landowners within the
14 basin. For this reason, it is critically important that the court first decide the ownership and quantity of
15 return flows for each year during the prescriptive period, before proceeding to a jury trial on
16 prescription.
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18 The total quantity of water imported into the AVAA was the subject of limited testimony in the
19 Phase 3 trial solely for the purpose of estimating total safe yield. The court will recall that the
20 Summary Expert Report (SEP) submitted by the Appropriators estimated return flows on a block
21 [multi-year] basis ranging from six to twelve years, not an annual basis. (See SEP Table 4.3-2a.)
22 Further, the SEP estimated return flows based on two separate lag time scenarios of 15 and 20 years.
23 (See SEP Tables 4.3-2a, 4.3-2b.) Other experts testified to alternate lag times. The court did not make
24 any findings regarding what quantity of return flows augments the Aquifer for any given year nor for
25 any given party. The court must decide these issues sufficiently in advance of the prescription trial to
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1 allow the parties' respective experts to analyze how pumping of return flows reduces a party's claimed
2 adverse pumping during the prescriptive period and thereafter prepare exhibits and jury instructions for
3 trial.

4 By way of example, suppose that a party asserting prescription has been pumping 1,000 acre-
5 feet each year for five years, and that the same party has a right to extract and reuse return flows from
6 imported water totaling 800 acre-feet for each year of the same five year period. Then, that party is
7 presumed to have lawfully pumped the return flows first, reducing the annual adverse pumping to 200
8 acre-feet per year. Multiply this exercise over a 50 year period and multiple parties and one must
9 conclude that it would be extremely confusing to a jury and consume an undue amount of time, to
10 decide the return flow issues while the jury is seated. For these and other reasons, the court should
11 complete trial of the Phase 4 issue well in advance of the Phase 5 trial.
12

14 **B. Adjudication of Sub-Basins**

15 Most parties agree that the AVAA is simply too large to adjudicate and manage as a single unit.
16 Further, the Department of Water Resources, the Technical Committee, the SEP, and Tejon's expert Dr.
17 John List have identified major sub-areas or sub-basins within the AVAA. Both the SEP, and Tejon's
18 expert Dr. John List identified the large sedimentary basin west of the Bedrock Ridge as the West
19 Antelope Valley Basin. (See e.g., Phase 3 Scalmanini Ex. 29.) The experts testified uniformly that
20 there has been little to no measureable flow over the Bedrock Ridge in decades, making the West
21 Antelope Valley Basin (including the Willow Springs area) ideal for separate adjudication and
22 management since the West Antelope Valley Basin simply does not have the overdraft and subsidence
23 problems associated with the central Palmdale/Lancaster area. A resolution of this issue would greatly
24 reduce the complexity of the case for the prescription trial, for management, and for settlement. If the
25 court were to find that some portions of the AVAA constituted separate "basins" for adjudication
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1 purposes, the landowners within those portions could focus on resolving any intra-basin issues or not be
2 bogged down with issues that pertain to other portions of the Aquifer. The trial court used a similar
3 sub-basin approach in a significantly small basin in the seminal case of *City of Los Angeles v. City of*
4 *San Fernando* (1975) 14 Cal.3d 199, 221 [The Upper Los Angeles River Area was divided into four
5 separate subareas, San Fernando, Sylmar, Verdugo and Eagle Rock, and the trial court made separate
6 awards of prescriptive rights in each subarea.].)

8 **V. RIGHT TO JURY TRIAL**

9 The right to trial by jury is guaranteed by the state constitution "inviolable" in actions triable by
10 jury at common law. (Cal. Const. art I, § 16.; Code Civ. Proc., § 592; 7 Witkin California Proc. (5th
11 ed. 2008) Trial § 80, p. 106.) The right is coextensive with the right as it existed in 1850 under English
12 common law. (*C & K Engineering Contractors v. Amber Steel Co.* (1978) 23 Cal.3d 1, 8.) As a
13 general proposition a jury trial is a matter of right in a civil action at law, but not in equity. (Ibid.) The
14 inquiry is purely historical. (*C & K Engineering Contractors, supra*, 23 Cal.3d. at p. 8.) If the action
15 deals with ordinary common law rights cognizable in courts of law, it is an action at law. (23 Cal.3d at
16 p. 9.) If, on the other hand, the action is essentially one in equity and the relief sought depends upon
17 the application of equitable doctrines, the parties are not entitled to a jury trial. (Ibid.) Wrongful denial
18 of the right to a jury "is not only reversible error but is also an act in excess of jurisdiction . . ." (7
19 Witkin California Proc. (5th ed. 2008) Trial § 82, p. 108.)

22 The PWS's claim by way of their cross-complaint that they have acquired groundwater rights
23 from the cross-defendants, including Granite and Tejon, by prescription. California courts have
24 uniformly held that a claim for prescription, whether by quiet title or declaratory relief, is an action at
25 law, not equity. (*Connolly v. Traube* (2012) 204 Cal.App.4th 1154, 1164; *Arciero Ranches v. Meza*
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(1993) 17 Cal.App.4th 114, 125-126.) Tejon and Granite are therefore entitled to, and hereby request, a right to trial by jury on the prescriptive claims.

Tejon and Granite are open to holding a bifurcated jury trial in San Jose for the convenience of the Court.

IV. CONCLUSION

Tejon and Granite believe that the next phase of trial should adjudicate the ownership and quantity of return flows from imported water during the claimed prescriptive period, followed by a regionally bifurcated trial on prescription.

Dated: July 22, 2013

KUHS & PARKER

By /s/ Robert G. Kuhs, Attorney for Tejon Ranchcorp and Granite Construction Co.

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