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13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**  
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17 Coordination Proceeding  
18 ANTELOPE VALLEY GROUNDWATER  
CASES,  
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Los Angeles County Waterworks District No.  
40 v. Diamond Farming Co.  
20 

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Los Angeles County Waterworks District No.  
21 40 v. Diamond Farming Co.  
22 Wm Bolthouse Farms, Inc. v. City of  
Lancaster  
23 Diamond Farming Co. v. City of Lancaster  
24 Diamond Farming Co. v. Palmdale Water  
25 District,  
26 

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AND RELATED ACTIONS  
27  
28

Judicial Council Coordination  
Proceeding No. 4408  
**RESPONSE TO PUBLIC WATER  
SUPPLIERS' OPPOSITION  
TO WATERMASTER MOTION  
TO INTERPRET**  
Date: January 31, 2018  
Time: 9:00 a.m.  
Dept.: 222  
The Hon. Jack Komar, Dept. 17  
Santa Clara Case No. 105 CV 049053  
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

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1 **I. INTRODUCTION**

2 The Exhibit 3 Public Water Suppliers purport to narrow their Judgment “interpretation”  
3 claims to one theory seeking a right to Pre-Rampdown Production that appears nowhere in the  
4 Judgment. Their “Notice of Withdrawal” drops their claim to Carry Over Federal Reserved Water  
5 Rights<sup>1</sup> and ignores their earlier request that the Watermaster allow Carry Over of Pre-Rampdown  
6 Production. But the Public Water Suppliers qualify their narrowing as “without prejudice,” so they  
7 seek to preserve their Carry Over claims as leverage, while the Watermaster works toward approving  
8 Rules and Regulations accounting for all groundwater production and Carry Over governed by the  
9 Judgment. That makes no sense. Despite the back-pedaling, a live dispute exists that requires this  
10 Court’s declaration of what the Judgment means. That declaration is important, because the  
11 Watermaster needs clear direction to prepare Rules and Regulations — and to start the Replacement  
12 Water Assessment — without confusion and delay threatened by unresolved claims that will be  
13 repeated if they evade review now. All the interpretation claims raised by the PWS Motion and  
14 Watermaster Motion are briefed. The Court should decide them.

15 Meanwhile, the Public Water Suppliers argue for the first time that the Watermaster cannot  
16 even ask the Court for help interpreting the Judgment. That new argument should be rejected as  
17 violating the Judgment and common sense.

18 Judgment Section 18.2 charges the Watermaster with providing unbiased representation for  
19 thousands of parties. Most lack the wherewithal to monitor every move by the Public Water  
20 Suppliers, or anyone else, and cannot prosecute costly Court motions to protect their rights under  
21 the Judgment. The Watermaster was created by the Judgment and appointed by this Court to  
22 implement the Judgment, so it has a concrete interest in proper interpretation of the Judgment and  
23 is “subject to” the Judgment’s terms within the meaning of Section 3.5.27. As a result, the  
24 Watermaster is a “Party” with standing to request the Court’s help resolving Judgment interpretation  
25 disputes. Beyond that, the Watermaster has inherent authority to request the Court’s help to interpret  
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27 <sup>1</sup> See Water Suppliers’ Notice of Withdrawal of Portions of Their Motion Under Sections 6.5  
28 of the Physical Solution for Interpretation of Judgment Confirming Applicability of Rampdown and  
Carryover Rights to Public Water Suppliers (filed January 18, 2018).

1 the Judgment, so that it can be successfully implemented.

2 That help has been requested here and is needed now. While attempting to draft the  
3 Watermaster Rules and Regulations for implementing the Judgment amidst a cross-fire of  
4 competing interpretations, the Watermaster Engineer concluded: “It is my professional Judgment  
5 that it is a matter of vital urgency that interpretive certainty be obtained with respect to . . . Pre-  
6 Rampdown Production Rights and Carry Over water . . . .” (Watermaster Motion, Declaration of  
7 Phyllis Stanin at 1:19-22 [filed January 2, 2018].) Failure to act now on the merits of the  
8 Watermaster Motion will frustrate the Watermaster’s legitimate need for guidance and will further  
9 delay preparation of Rules and Regulations to collect Replacement Water Assessments and carry  
10 out all Judgment provisions needed to balance the Basin.

11 **II. PROCEDURAL HISTORY**

12 The PWS Motion and the Watermaster Motion arise from disputes preventing the  
13 Watermaster from preparing Rules and Regulations to implement Judgment provisions on Pre-  
14 Rampdown Production and Carry Over rights, which affect the Watermaster’s ability to calculate  
15 and collect Replacement Water Assessments starting in 2018.

16 The PWS Motion provides no information about the Watermaster proceedings giving rise to  
17 the disputes, and the Watermaster Motion does not provide the written record of proceedings before  
18 the Watermaster (apparently based on direction from the Watermaster Board). The written record  
19 is provided by the Request for Judicial Notice and Declaration of Stanley C. Powell In Response to  
20 Motions to Interpret (“RJN”) (filed January 18, 2018). The record includes an index (RJN Exhibit  
21 1), materials from the Watermaster meeting agenda packages for the August 23, 2017 meeting (RJN  
22 Exhibit 2), the October 18, 2017, meeting (RJN Exhibit 3), the November 15, 2017 meeting (RJN  
23 Exhibit 4), the December 6, 2017, meeting (RJN Exhibit 5), and a November 22, 2017, letter from  
24 Keith Lemieux to the Watermaster that was not included in the December 6, 2017, agenda package  
25 (RJN Exhibit 6).

26 At the November 15, 2017, meeting, the Watermaster instructed its Watermaster Counsel to  
27 provide its opinion with respect the Pre-Rampdown Production issues and Carry Over issues. At  
28 the December 6, 2017, Watermaster Meeting, the Watermaster Counsel provided two opinion

1 memoranda on Pre-Rampdown Production (RJN Exhibit 5 at CLA\_0081-0092) and Carry Over  
2 rights (RJN Exhibit 5 at CLA\_0114-0123). At that meeting, the five-member Watermaster board  
3 rejected by one vote (by the Public Water Suppliers representative) the Watermaster Counsel’s  
4 proposed resolutions (RJN Exhibit 5 at CLA-0080 and CLA-0112-0113), which would have  
5 included the Watermaster Counsel opinions in the Watermaster Motion.

6           Instead, the Watermaster directed its Watermaster Counsel to exclude its two opinion  
7 memoranda from the Watermaster Motion, and to provide its opinion only if the Court asks. Those  
8 memoranda accurately synthesize the parties’ comments provided to the Watermaster (including  
9 oral comments made at the November 15 Watermaster meeting), and are the best and most efficient  
10 means to understand the range of issues and competing positions raised. The Watermaster Counsel  
11 committed to file the motion “after the holidays” and before the next Watermaster meeting in  
12 January 2018.

13           The Public Water Suppliers then raced to the Courthouse and filed their Motion on  
14 December 29, 2017 — the last work day before New Years — and the Watermaster Motion was  
15 filed the next work day, on January 2, 2018.

16 **III. ARGUMENT**

17           **A. The Watermaster Is Responsible For Preparing Rules And Regulations,  
18           And Is Not A Third Party In A Dispute Between Other Parties**

19           The Judgment interpretations requested by the Watermaster Motion are needed so the  
20 Watermaster can “fulfill its urgent legal obligation” to prepare Rules and Regulations (Watermaster  
21 Motion at 2:3-5) and start Replacement Water Assessments (Judgment, § 9.2). The Judgment makes  
22 the Watermaster Engineer, and not the Parties, responsible for preparing Rules and Regulations for  
23 Court approval (Judgment, § 18.4.2). This dispute is not just between certain blocks of pumper  
24 Parties seeking different Judgment interpretations, but is a dispute preventing the Watermaster  
25 Engineer from preparing Rules and Regulations the Watermaster must approve and then propose  
26 for Court approval to implement the Judgment. The Watermaster Engineer, Watermaster Counsel  
27 and Watermaster tried to resolve the interpretation disputes through an administrative process whose  
28 failure culminated in the Watermaster’s unanimous direction to file the Watermaster Motion. The

1 Court needs to decide all the interpretation issues raised in the Watermaster Motion, so the  
2 Watermaster has the guidance it needs to prepare the Rules and Regulations and to start the 2018  
3 Replacement Water Assessment.

4 Both the PWS Motion and Watermaster Motion rely on Judgment Section 6.5, which  
5 confirms the Court’s continuing jurisdiction “to interpret, enforce, administer or carry out this  
6 Judgment.” Although the Watermaster Motion clearly describes the Judgment interpretation  
7 disputes arising between the Public Water Suppliers and other Parties, the PWS Motion fails to  
8 identify any specific Party with whom it has a Judgment interpretation dispute and fails to describe  
9 any competing Judgment interpretations creating the dispute. If the Court were to reject the  
10 Watermaster Motion for lack of standing, the Public Water Suppliers would end up presenting the  
11 Court with an incomplete and one-sided Judgment interpretation pitch that frustrates and subverts  
12 the Watermaster’s obligation to “carry out its duties, powers and responsibilities in an impartial  
13 manner without favor or prejudice to any Subarea, Producer, Party or Purpose of Use” (Judgment,  
14 § 18.2). That duty is broad, encompassing Parties lacking the power to vote for any of the  
15 Watermaster representatives under Section 18.1.1. Excluding the Watermaster from seeking the  
16 Court’s help interpreting the Judgment eliminates the one neutral Party that has a duty to consider  
17 all interests in the Basin.

18 Finally, the Court should decide all the interpretation issues raised by the Watermaster  
19 Motion, because the Watermaster must consider interests of Public Water Suppliers that are not part  
20 of the PWS Motion or Opposition. For example, the Lemieux Letter (RJN Exhibit 6 at CLA\_0126)  
21 presented the Watermaster with Judgment interpretations by Desert Lake Community Services  
22 District and North Edwards Water District, which are not part of the PWS Motion<sup>2</sup> or Notice of  
23 Withdrawal.<sup>3</sup> Some positions in the Lemieux Letter differ from positions in the PWS Motion (e.g.,  
24 how to calculate Pre-Rampdown Production values for Public Water Suppliers).

25 Failure to decide the Judgment interpretation issues raised by the Watermaster Motion would  
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27 <sup>2</sup> See PWS Motion at 4:4-7 (listing moving parties).

28 <sup>3</sup> See Notice of Withdrawal at 1:1-9 (listing withdrawing parties).

1 allow the Public Water Suppliers to control a critical process — preparation of Rules and  
2 Regulations — that the Judgment allocates to the Watermaster.

3 **B. The Watermaster Is A Party That Can Bring A Motion Under Section 6.5**

4 Judgment Section 3.5.27 defines “Party” to include both: (1) any person that has been named  
5 and served or otherwise properly joined; and (2) any person that has become subject to this Judgment  
6 and any prior judgments of this Court. The Watermaster is an entity created by the Judgment, is  
7 “[s]ubject to the continuing supervision and control of the Court” (Section 18.4 [emphasis added])  
8 and, therefore, is indisputably “*subject to* this Judgment.” For purposes of the Judgment, a “person”  
9 can include an organization, such as the Watermaster, and there has been no dispute that the  
10 Watermaster is a “person” that can enter into contracts (Judgment, § 3.5.27 and Civil Code Section  
11 1556).

12 In addition to not comporting with the plain language of the Judgment, the Public Water  
13 Suppliers’ argument that the Watermaster may not avail itself of Judgment Section 6.5 leads to an  
14 absurd result, where the Watermaster as the entity charged with enforcing and administering the  
15 Judgment is unable to avail itself of Section 6.5 provisions dealing with Watermaster functions (like  
16 “interpret, enforce, administer or carry out this Judgment”). Instead, the PWS Opposition would  
17 require that another Party must “champion” the Watermaster’s cause in the Court, effectively  
18 wresting Judgment implementation from the Watermaster and reserving it exclusively to those  
19 Parties that can afford to litigate their way to controlling the process.

20 **C. The Watermaster Motion Is Not Duplicative Of The PWS Motion**

21 The PWS Opposition erroneously argues the Watermaster Motion is not needed because it  
22 seeks “the relief already sought by the Water Suppliers” (PWS Opposition at 1:9-10), and contends  
23 that “[h]aving duplicative motions that present the issues slightly differently may cause confusion  
24 with the Parties and the Court as to the issues in dispute” (PWS Opposition at 3:23-24).<sup>4</sup> That is  
25

26 \_\_\_\_\_  
27 <sup>4</sup> As Parties responding to these motions, the procedural difficulties have primarily come from  
28 the PWS Motion being presented without any reference to the Watermaster’s administrative process  
to develop Rules and Regulations, and the Watermaster’s decision to not allow its counsel to present  
the full record to the Court and to provide its opinion.



1 wrong. The Watermaster conducted a multi-month administrative process to resolve Judgment  
2 interpretation disputes preventing the Watermaster from preparing Rules and Regulations required  
3 to implement the Judgment. That process culminated in a unanimous Watermaster board decision  
4 to file the Motion asking the Court to resolve those Judgment interpretation disputes. A decision on  
5 the merits of the Watermaster Motion is needed, so the Watermaster can discharge its duty to prepare  
6 the Rules and Regulations on Pre-Rampdown Production and Carry Over rights in time to  
7 implement the 2018 Replacement Water Assessment.

8 The Watermaster Motion requests interpretive guidance on Carry Over related to Pre-  
9 Rampdown Production, which is not duplicated in the PWS Motion. The PWS Opposition fails to  
10 recognize that the Watermaster seeks to address comments from all Parties — not just the Public  
11 Water Suppliers. Parties that have argued that Pre-Rampdown Production can be Carried Over  
12 include Mr. Nebeker (RJN Exhibit 5 at CLA\_0109-0110) and Rosamond Community Services  
13 District (RJN Exhibit 5 at CLA\_0074-0075). Although Rosamond Community Services District  
14 purports to withdraw its prior argument<sup>5</sup> now, it previously told the Watermaster that it was  
15 presenting the argument on behalf of *other Parties*, who can reasonably be expected to raise the  
16 argument if it is not decided now. Therefore, the Watermaster still needs guidance on this issue.

17 The PWS Opposition also fails to recognize that the purported withdrawal “without  
18 prejudice” of the Public Water Suppliers’ claim to Carry Over the unused portion of the Federal  
19 Reserved Water Right fails to resolve the Watermaster’s need for guidance to develop Rules and  
20 Regulations on this issue. The Watermaster Motion requests that guidance. Far from making that  
21 request “duplicative,” the Public Water Suppliers’ purported withdrawal of the issue “without  
22 prejudice” preserves this disputed issue as it arose during the Watermaster’s administrative process  
23 culminating in the Watermaster Motion.

24 The Court must decide the Watermaster Motion and PWS Motion on their merits, so the  
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26 <sup>5</sup> Rosamond defined “Reduction Right” as “the groundwater that may be produced during  
27 years 3-7 of the Rampdown which is greater than the Party’s final Production Right ...” (RJN  
28 Exhibit 4 at CLA\_0074), and that a “Party should then be entitled to Carry Over for producing less  
than the sum of the Reduction Water and their Production Right” (*id.* at CLA\_0075). This is  
inconsistent with the argument in the PWS Opposition.

1 Watermaster can timely prepare Rules and Regulations required to implement the Judgment's  
2 Replacement Water Assessments needed to balance the Basin.

3 **IV. CONCLUSION**

4 The Public Water Suppliers and others created a live dispute in the Watermaster's multi-  
5 month administrative process that has prevented the Watermaster from discharging its duty to  
6 prepare Rules and Regulations. That dispute affects thousands of Parties governed by the Judgment  
7 and culminated in the Watermaster board's unanimous vote to obtain this Court's assistance  
8 interpreting the Judgment. The Court should not allow the Exhibit 3 Public Water Suppliers to  
9 back-pedal their way into preventing the Watermaster from obtaining the Judgment interpretation  
10 guidance it needs to prepare Rules and Regulations implementing the 2018 Replacement Water  
11 Assessment in light of the Pre-Rampdown Production and Carry Over rights actually created by the  
12 Judgment. Instead, the Court should deny the PWS Motion and decide the Watermaster Motion on  
13 its merits.

14  
15 DATED: January 24, 2018

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21 DATED: January 24, 2018

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3 **PROOF OF SERVICE**

4 I, Terri Whitman, declare:

5 I am a citizen of the United States and employed in Sacramento County, California. I am  
6 over the age of eighteen years and not a party to the within-entitled action. My business address is  
7 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On January 24, 2018, I submitted a  
8 copy of the within document(s): **RESPONSE TO PUBLIC WATER SUPPLIERS’**  
9 **OPPOSITION TO WATERMASTER MOTION TO INTERPRET** to [www.avwatermaster.org](http://www.avwatermaster.org)  
10 for email submission to all parties appearing on the electronic service list for the Antelope Valley  
11 Groundwater case. Electronic service is complete at the time of transmission.

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

14 Executed on January 24, 2018 at Sacramento, California.

15  
16 

17  
18 \_\_\_\_\_  
Terri Whitman