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Defendant/Cross Complainant

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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. BC325201;

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, consolidated actions
Case Nos. RIC 353840, RIC 344436, RIC 344668.

Judicial Council Coordination Proceeding No. 4408

MOTION IN LIMINE ONE: QUARTZ HILL WATER DISTRICT MOTION IN LIMINE REGARDING QUANTITY OF IMPORTED WATER RETURN FLOWS

Date: May 13, 2013
Time: 9:00 a.m.
Department: 1
Hon. Jack Komar

Quartz Hill Water District moves for order in limine to exclude evidence regarding quantity of imported water return flows.

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I. INTRODUCTION

Quartz Hill Water District, and most of the other Public Water Suppliers, have been purchasing water from the State Water Project since 1976. The cost of this historical water purchases are in the millions of dollars. This was done to preserve the aquifer.

Quartz Hill Water District intends to continue to purchase and import water from the State Water Project. This imported water is more important than ever. Any physical solution will rely on maximizing the importation of State Water Project water.

The quantity of return flows from imported State Water Project water (hereafter "return flows") was the subject of extensive testimony. This testimony resulted in the safe yield selected by this court. Evidence contrary to this judicially determined amount ought to be excluded.

II. BACKGROUND

On July 18, 2011 this Court issued its Statement of Decision on the Phase Three Trial. In that statement, the Court found "Experts also conducted a sophisticated analysis [of] infiltration into the aquifer, including such things evapotranspiration, water from other sources introduced into the aquifer (artificial recharge), [as] well as the nature and quantity of extractions from the aquifer and return flows therefrom" (Phase Three Statement of Decision, page 4, lines 12 – 15).

In this decision, the Court found that the safe yield of the Basin was 110,000 acre feet a year (Phase Three Statement of Decision, page 9, lines 28).

Mr. Scalmanini was the only witness who testified the safe yield of the basin was 110,000. The Public Water Suppliers advanced 110,000 acre-feet as the safe yield, and they prevailed.

III. OBJECTIONS

This motion seeks an order to exclude any witness from presenting any evidence regarding the quantity of imported water and the percentage of imported water that returns to the aquifer. This evidence is improper because:

1) Such evidence is an improper request for reconsideration of the Phase 3 order.

2) Such evidence is irrelevant.

3) The probative value of this evidence is substantially outweighed because its receipt will necessitate the undue consumption of time (Evid. Code § 352).

This objection would also include disguised attempts to introduce such evidence, such as evidence of geologic conditions in the basin as a whole or portions thereof.

IV. THE COURT OUGHT TO REJECT ATTEMPTS TO RECONSIDER ITS PHASE THREE DECISION

In this complex action, this court has elected to hold multiple trials, as provided by California Rule of Court 3.541. Thus, until final judgment has been entered in this action, all decisions by this court are interlocutory orders. Interlocutory orders are governed by Code of Civil Procedure section 1008. By statute, the time to bring a motion for reconsideration of the Phase 3 decision thus expired July 28, 2011 (Cal. Civ. Proc. § 1008(a)).

Code of Civil procedure section 1008 is the only method by which a party may request a court reconsider an interim order. "Section 1008 more generally states procedures for applications to reconsider any previous interim court order. It "applies to all applications for interim orders" (§ 1008, subd. (g)) and provides time limits and other requirements for such applications. . . .. *No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section.*" (§ 1008, subd. (e), italics added.) *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1098 (emphasis in the original). No motion for reconsideration of the Phase 3 order has been made by any party to this case.

Some parties to this action have expressed the intent to introduce evidence in the Phase 4 trial in an attempt to cause this court to reconsider a component of its Phase 3 ruling, specifically that portion of the order which relates to return flows.

This is an ill-disguised, tardy, and improper request for reconsideration, contrary to statute and ought to be rejected by this court.

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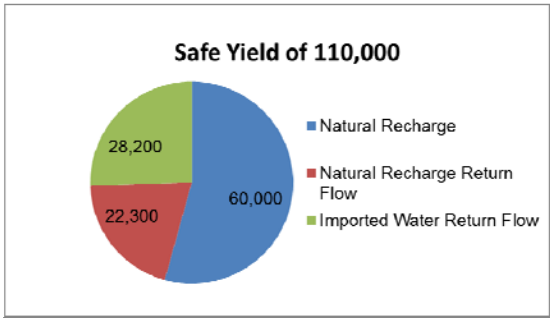
V. THE PHASE THREE DECISION INCLUDED A DETERMINATION OF RETURN FLOWS; EVIDENCE CONTRARY TO THIS DECISION OUGHT TO BE EXCLUDED

At this conclusion of the Phase 3 trial this court determined that the safe yield of the basin was 110,000 acre feet per year. 110,000 acre feet was an expert opinion of Mr. Scalmanini and was the total of three components: 1) Natural Recharge, 2) Return Flows from Natural Recharge, and 3) Return Flows from Imported Water. See Exhibits Scalmanini 93 and 96, attached hereto as Exhibits 1 and 2. See Page 501 (lines 18-25), 515, 516 (lines 1-5) from Mr. Scalmanini's trial testimony, attached hereto as Exhibit 3.

Natural Recharge	60,000
Natural Recharge Return Flow	22,300
Imported Water Return Flow	28,200
Total	110,500

These exhibits, and the court's order, is represented in pie chart format below:



The return flows from imported water fluctuate every year, based upon the amount of water imported the prior year. Return flows are therefore better expressed as a percentage of the prior years imported water. Mr. Scalmanini testified 39.1% of imported water used for municipal and industrial purposes return to the aquifer and 33.3% of imported water used for agricultural purposes return to the aquifer, See Exhibit Scalmanini 95, attached hereto as Exhibits 4[1]. See Page

[1] The 39.1% and 33.3% are the product of a recursive (i.e. percentage of percentage ad infinitum) of 25% and 28.1%.

508 (lines 20-25), 509 (lines 1-20) from Mr. Scalmanini's trial testimony, attached hereto as Exhibit 5.

Mr. Scalmanini also testified that these percentages were not limited to imported water. Imported water acts no differently from native water that is pumped from the ground, and then used for municipal, industrial, and agricultural purposes. Changing these percentage would necessarily change both the Native Recharge Return Flow and the Imported Water Return Flow.

One of the subjects of this trial in imported water return flows. At the Phase 3 trial, this court determined that historically these return flows equaled 28,200 acre-feet per year. Looking forward, we will need to use the percentages that resulted in this 28,200 acre-feet per year, since the amount of imported water will fluctuate annually.

Thus, this Court has already determined that the return flows from imported water used for municipal and industrial purposes is 39.1%, and return flows form imported water used for agricultural purposes is 33.3%. Any other percentages would necessarily change the historic imported water return flows, and would thus constitute an improper request that this Court reconsider its phase 3 decision.

VI. EVIDENCE REGARDING THE PERCENTAGE OF IMPORTED WATER THAT RETURNS TO THE AQUIFER AS RETURN FLOWS IS IRRELEVANT

The amount of return flows, expressed as a percentage, that returns to the aquifer is irrelevant. It is irrelevant because that issue has already been decided by this Court and therefore no longer in dispute. This Court heard extensive testimony by many witnesses regarding the safe yield of the basin. Witnesses testified that the safe yield was the total of natural recharge, return flows from the pumping of that natural recharge, and the return flows from imported water.

This Court found that the safe yield was 110,000 acre-feet per year, and thus the return flows from imported water was 39.1% municipal and industrial and 33.3% for agricultural use.

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Relevant Evidence is evidence that has a tendency in reason to prove or disprove any disputed fact of consequence in determining the action (Evidence Code § 210). Evidence regarding the percentage of imported water that returns to the aquifer is no longer relevant because it will no longer "prove or disprove any disputed fact that is of consequence." This percentage is no longer of consequence because it has previously been decided, and no motion for reconsideration has been, nor may be filed.

This evidence is thus irrelevant, and ought to be excluded (*Andres v. Young Men's Christian Assn.* (1998) 64 Cal.App.4th 85, 93; *People v. Reyes* (1976) 62 Cal.App.3d 53, 68).

VII. TAKING EVIDENCE AGAIN REGARDING THE PERCENTAGE OF IMPORTED WATER WOULD NECESSITATE THE UNDUE CONSUMPTION OF TIME

The amount of water used that then returns to the aquifer was the subject of extensive testimony at the phase 3 trial. Mr. Scalmanini testified as to these return flow amounts from natural sources and from imported water. These amounts, plus the 60,000 native recharge, resulted in the safe yield of 110,000.

Revisiting this issue would require extensive expert testimony that would touch upon many of the Phase 3 issues. Any party attempting to introduce evidence would need many days of testimony to credibly offer evidence regarding the return flow amounts and percentages. The Public Water Suppliers' expert would need to rebut these opinions. Such a rebuttal would likely take even longer.

Even if the Court concluded this testimony was relevant, its usefulness would be minimal, and would be far outweighed by the consumption of time. After the imposition of the physical solution, the return flows from imported water will become of critical importance. These return flows will be necessary to impose a physical solution and will relied upon by all parties, and the watermaster. Since this issue was decided in the Phase 3 trial, additional evidence should be excluded.

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VIII. CONCLUSION

During the phase 3 trial, all parties had the opportunity to submit evidence regarding imported water return flows. Many parties did, and the Court rendered a decision on this evidence. Now, that phase is over. It is time to address the new issues, not re-litigate resolved matters. Additional evidence should not be admitted on this topic.

CHARLTON WEEKS LLP

Dated: March 29, 2013

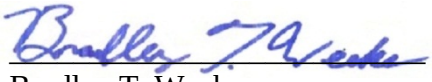

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EXHIBIT ONE

Native Safe Yield

Land Use Period	Land Uses		Natural Recharge (afy)	Ag. Return Flows (afy)	M&I Return Flows (afy)	Recycled Return Flows (afy)	Native Sustainable Yield (afy)
	Ag (%)	M&I (%)					
Early-All Ag.	100	0	60,000	20,000	0	0	80,000
1995-1999	51.9	48.1	60,000	10,680	11,120	500	82,300
1996-2005	53.2	46.8	60,000	10,950	10,850	500	82,300
2005	51.5	48.5	60,000	10,600	11,200	500	82,300

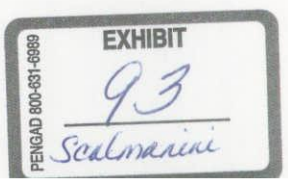

EXHIBIT TWO

Total Safe Yield

Land Use Period	Native Safe Yield (afy)	Supplemental Safe Yield (afy)	Total Safe Yield (afy)
Early-All Ag.	80,000	N/A	80,000
1995-1999	82,300	25,300	107,600
1996-2005	82,300	27,500	109,800
2005	82,300	28,200	110,500

EXHIBIT THREE

of the overall analysis the combination of, again, 82,300 acre feet per year of native yield and 28,200 acre feet of supplemental yield would indicate or result in a calculated total safe yield of 110,500 acre feet per year. 14:03:21

MR. KUHS: I object and move to strike Mr. Scalmanini's last answer on relevance grounds.

MR. ZIMMER: Join.

BY MR. DUNN:

Q. Mr. Scalmanini, based on the experience that you have in analyzing groundwater basins in California, together with your education and training and the work that you have done in this case and the work that you have collaborated with others, and using the work by both Mr. Durbin and Mr. Wildermuth, did you reach any opinions about the safe yield of the Antelope Valley groundwater basin or the Antelope Valley area of adjudication? 14:03:46 14:04:07

MR. JOYCE: Asked and answered.

MR. KUHS: Vague as to time. 14:04:26

THE WITNESS: Yes.

BY MR. DUNN:

Q. I'd like --

A. And I think they're summarized in Exhibit 96. So my opinion would be that the 14:04:32

yield of the basin would be equal to its native yield, or about 80,000 acre feet per year.

In the subsequent time periods; you know, closer to the present but all influenced by the use of supplemental water, as I think we went through yesterday, supplemental water was introduced from the state water project beginning in the 1970s. So everything from the mid '90s to the present is -- includes the influence of supplemental water from the state water project. 14:01:40 14:01:58

So in simple summary, for each of those three time periods; from '95 to 99, from '96 to 2005, and for the single year 2005, the total safe yield of the basin would be the combination of its native yield and supplemental yield. So using '95 to '99, for example, the native yield of 82,300 and the supplemental yield of 25,300 added together would produce a total safe yield of 107,600 acre feet per year. 14:02:14

If you chose the ten-year period on average leading up to the end of this analysis, then the combination of 82,300 of native yield and 27,500 of supplemental yield would lead to a total yield of 109,800, or close to 110,000. 14:02:36

And for the single year 2005 at the end 14:02:58

there.

A. Okay. For the four selected periods of cultural conditions, so-called early historical, and then the five-year period, 1995 to 1999; the ten-year period, 1996 to 2005; and the seven-year period for the year 2005, which are enumerated or tabulated down the left side of Exhibit 93. 13:40:35

Then there is a second broad column with two subcolumns that show the relative fractions of land use over those time periods devoted to agricultural or municipal and industrial-type land and water uses, the fractions devoted to them. 13:40:59

Then as noted in Exhibit 91 --

Q. If you'll give us just a moment to get to Exhibit 91. 13:41:22

A. Yeah.

Q. Thank you.

A. Well, the natural recharge was considered to be the same for all those long-term average --

Q. And is that -- I'm sorry. Is that 60,000 -- 13:41:31

A. That's 60,000 acre feet which would be in the third column of Exhibit 93.

And then from interpretation of applied water and return flows for agricultural land uses 13:41:49

EXHIBIT FOUR

Supplemental Safe Yield

Land Use Period	Supplemental Water Use (afy)		Supplemental Recharge (afy)		Return Flows from Supp. Recharge (afy)		Supplemental Sustainable Yield (afy)		
	Ag	M&I	Ag	M&I	Ag	M&I	Ag	M&I	Total
1995-1999	19,550	48,100	4,890	13,515	1,610	5,285	6,500	18,800	25,300
1996-2005	16,625	56,320	4,155	15,825	1,345	6,175	5,500	22,000	27,500
2005	9,500	64,000	2,375	17,985	825	7,015	3,200	25,000	28,200

EXHIBIT FIVE

800 acre feet per year in 2005 and increased for municipal-type uses because of the increasing use of supplemental water by municipal users from a little over 5,000 acre feet per year to a little over 7,000 acre feet per year. 13:52:00

So the supplemental yield that's attributable to the importation of supplemental water from the state water project and recharge that results from that contributes to, and depending on the selected time period, somewhere between about 13:52:18 25,000, but the calculated number is 25,300 acre feet per year of additional yield up to about a little more than 28,000, or calculated 28,200 acre feet per year of additional yield resulting from the use of supplemental water. 13:52:37

Q. And you're referring now to the column on Exhibit No. 95 on the far right-hand column?

A. Yes, I am.

Q. Okay. Thank you.

Mr. Scalmanini, what number -- or excuse me -- what estimate did you use for agricultural return flows in terms of percentage? 13:52:48

A. Well, on a crop-by-crop basis we computed the fractions of return flows, and they ranged for the -- I'll call it collection of crops grown in 13:53:07

the valley from 22 to 28 percent. Because of the varying crop mix and using periods of time and things of that type we used an average of 25 percent in the midst of that overall range of return flow rates. 13:53:24

Q. And that's the average return flows for all crops; is that correct?

A. Yes.

Q. And a similar question for the --

A. Well, I better back up. It's not an average. It's a selected midpoint amongst the collection of crops. We didn't compute an average among them. 13:53:31

Q. And for the estimated municipal return flows in terms of a percentage, how was that calculated? 13:53:46

A. Well, that's a bit of an exercise to try to describe. But we spent a fair amount of time -- well, the answer to the question is 28.1 percent, but I think you also asked how is that determined. 13:54:02

Q. Correct.

A. And so that's the part that will take a little while. We spent a fair amount of time looking at service areas of municipal purveyors and what you might call service areas of sewer agencies 13:54:15

PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1031 West Avenue M-14, Suite A, Palmdale, California, 93551.

On March 29, 2013, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

MOTION IN LIMINE ONE: QUARTZ HILL WATER DISTRICT MOTION IN LIMINE REGARDING QUANTITY OF IMPORTED WATER RETURN FLOWS

By posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on March 29, 2013

Bradley T. Weeks

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