

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

Coordination Proceeding Special Title (Rule 1550(b))

Case No. JCCP 4353 Department No. 47

QSA COORDINATED CIVIL CASES

JUDGMENT

IMPERIAL IRRIGATION DISTRICT v. ALL PERSONS INTERESTED

Imperial County Superior Court Case No. ECU01649/Sacramento County Superior Court Case No. 04CS00875

15 The Court of Appeal h

The Court of Appeal having reversed the judgments in the coordinated cases of Imperial County Case No. ECU01649 (Sacramento County Case No. 04CS00875), Imperial County Superior Court Case No. ECU01653 (Sacramento Superior Court Case No. 04CS00877) and Imperial County Superior Court Case No. ECU01656 (Sacramento Superior Court Case No. 04CS00878), and having remanded the cases to the trial court for adjudication of the outstanding issues in Case No. ECU01649 and adjudication of the issues arising under the California Environmental Quality Act in Case Nos. ECU01653 and ECU01656 (*In re Quantification Settlement Agreement Cases*, 201 Cal.App.4th 758, 836, 847, 862,

Trial having been held pursuant to the instructions of the Court of Appeal on November 13 and 14, 2012, in the above-entitled court, the Honorable Lloyd G. Connelly presiding,

The parties having appeared at trial through counsel and having presented oral argument, as set forth in the court minutes titled "Court Trial - Day One" and "Court Trial - Day Two," copies of which are attached hereto and incorporated herein,

The matter having been submitted for decision and having been subsequently reopened for additional briefing and resubmitted,

A Ruling on Submitted Matter have been filed by the court and identified as the court's proposed statement of decision,

Parties' objections to the proposed statement of decision having been filed,

The court having revised the proposed statement of decision in response to the parties' objections and having filed a Final Statement of Decision on July 31, 2013, which is incorporated into this judgment as though fully set forth,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. The 12 Quantification Settlement Agreements ("QSA agreements") set forth as Exhibits A through L to the Second Amended Civil Complaint for Validation of Contracts filed by Imperial Irrigation District ("IID") herein are legally valid and enforceable: IID had the authority to enter into and perform the 12 agreements; a majority of the members of the IID Board voted to approve the agreements pursuant to Resolution No. 9-2003 and Resolution No. 10-2003 on October 2, 2003; in approving the 12 agreements, the Board acted in compliance with the requirements of the Ralph M. Brown Act (Gov. Code § 54950 et seq.) and the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), and the Board legally delegated authority to Board officers to execute the 12 agreements upon determination by the Board's general manager and chief counsel that the agreements were substantially in the same form and substance as those submitted to the board for review prior to approval; in executing the agreements,

the Board officers acted within the scope of their delegated authority upon the requisite determination by the general manager and chief counsel.

- 2. Pursuant to Code of Civil Procedure section 868 and rule 3.1700 of the California Rules of Court, IID, San Diego County Water Authority, Coachella Valley Water District, Metropolitan Water District of Southern California, Vista Irrigation District, the City of Escondido, and the State of California acting by and through the Department of Water Resources and the Department of Fish and Game shall recover their costs of suit from the County of Imperial, the Imperial County Air Pollution Control District, Protect Our Water and Environmental Rights (POWER), Cuatro Del Mar, and the Morgan/Holtz and Barioni/Krutzsch parties who are identified as having appeared at trial in the attached court minutes.
- 3. The court reserves jurisdiction to hear and determine motions for attorney fees filed pursuant to rule 3.1702 of the California Rules of Court.

Dated: July 31, 2013



LLOYD G. CONNELLY

Judge of the Superior Court (Retired)

Trand Comelly

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

AMENDED 11/16/12

DATE/TIME : NOVEMBER 13, 2012 9:00 a.m. DEPT. NO : 33

JUDGE : LLOYD G. CONNELLY CLERK : C. BEEBOUT

REPORTER : V. HALEY, #10771 ATTENDAN : R. SANCHEZ-JACOBO

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COORDINATED PROCEEDINGS SPECIAL TITLE (RULE 1550(b))

QSA COORDINATED CIVIL CASES

Case No.: JCCP 4353

Nature of Proceedings: COURT TRIAL – DAY ONE

The above-entitled cause came before this Court on this date for trial with the following counsel/parties present:

Party	Counsel
Barioni/Krutzsch Parties	Lowell F. Sutherland
(Donald V. Barioni, Beach Line Citrus LLC, Bixby Land	
Company, Robert S. Chell, Coast Imperial Partners, Donald	
L. Howard and Kimberlee A. Howard as trustees, Chrisman	
B. Jackson, Mary A. Jackson and Chrisman B. Jackson as	
trustees, John D. Jackson Jr. individually and as trustee,	
Margaret M. Lillywhite and Daniel H. Lillywhite as trustees,	
Daniel H. Lillywhite and Robin J. Lillywhite as trustees,	
Rosal Randes, Sali Properties, The Sinclair Ranches LLC,	
TAC Land LLC, and Charles H. Westmoreland and Alexa	
Westmoreland as trustees)	
City of Escondido	Donald R. Lincoln
Coachella Valley Water District	Michelle Ouellette, Melissa R. Cushman
	and Steven B. Abbott
County of Imperial	Antonio Rossmann, Roger B. Moore
	and Barton Lounsbury
Cuatro Del Mar	Malissa Hathaway McKeith & Ernest Stone
Imperial County Air Pollution Control District	Alene M. Taber, Kathryn M. Casey
	and Jonathan E. Shardlow
Imperial Irrigation District	Mark J. Hattam, Jeffrey A. Chine & Kathryn D. Horning
Ronald Leimgruber	In propria persona
Metropolitan Water District of Southern California	Adam C. Kear & John Schlotterbeck, Sr.
Morgan/Holtz Parties	Thomas S. Virsik
(Walter Holtz, Toni Holtz, Michael W. Morgan, John J.	
Elmore, Richard Elmore, Gary Foster and Rodney Foster)	
Protect Our Water and Environmental Rights	Rose M. Zoia
San Diego County Water Authority	Lisabeth D. Rothman, Amy M. Steinfeld
	and Daniel S. Hentschke
State of California by and through the Department of Water	Clifford T. Lee
Resources and the Department of Fish and Game	
Vista Irrigation District	Joel D. Kuperberg

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DATE: NOVEMBER 13, 2012

CASE NO. : JCCP 4353

CASE TITLE : QSA COORDINATED CIVIL CASES BY: <u>C. BEEBOUT,</u>

CASE NUMBER: JCCP 4353 DEPARTMENT: 33

CASE TITLE: QSA COORDINATED CIVIL CASES

PROCEEDINGS: COURT TRIAL - DAY ONE

Off the record, the Court directed the following parties to sit at the counsel table: County of Imperial, Imperial County Air Pollution Control District, Imperial Irrigation District, and Metropolitan Water District of Southern California.

Off the record, the Court directed the following parties to sit at the first overflow counsel table in the audience area: Coachella Valley Water District, San Diego County Water Authority, and State of California.

The Court advised counsel that the Court was prohibiting oral argument on evidentiary objections, especially as they related to the requests for judicial notice; objections on the scope of pleadings; and prior ruling limitations with the possible exception of Statement of Decision #18. The Court prohibited arguments in these areas because these areas were already well briefed in the pleadings.

The Court advised counsel that the Court discouraged oral argument on exhaustion, jurisdiction, statute of limitations, the Brown Act, ultra vires, the authority to contract under the Water Code, and duress. The Court discouraged arguments in these areas because these areas were already well briefed in the pleadings.

The Court advised counsel that the Court would like to hear more about the facts in this case than hear arguments about the law. The Court noted that it was difficult to find documents in the administrative record which were cited in the briefs and determine what document was being cited. The Court spoke briefly about the usefulness of the compendiums lodged by the parties. The Court advised counsel that the Court would have lots of questions about CEQA and very few about validation because validation was well briefed in the pleadings.

The Court posed questions and heard oral arguments from the parties in the following areas:

- The failure to designate a single lead agency and the responsibilities of co-lead agencies. (Counsel directed the Court's attention to Administrative Record 4-5-379-25300 and Administrative Record 3-7-70265.)
- 2. The fundamental objections to the baseline methodology.
- 3. The chart entitled "Table 1: Seven Party Agreement" from pages 2 and 3 of the opening brief filed by Imperial County Air Pollution Control District.
- 4. The chart entitled "Colorado River Aqueduct Normal Year Deliveries" from page 27 of the opening brief filed by Metropolitan Water District of Southern California.
- 5. The modeling chart on page 43 of the response brief filed by Imperial Irrigation District. (Mark Hattam advised the Court that the chart, entitled "Table 3.0-1. Comparison of Salton Sea Existing Baseline, Future Baseline, and Proposed Project Impacts at the Salton Sea", appears in Administrative Record 3-11-200860. Mr. Hattam also directed the Court's attention to a related chart in Administrative Record 3-10-101804 0216.)
- 6. The chart entitled "Diagram 5: Figure 3.5-2 Projected Mean Elevation of the Salton Sea Under Proposed Project and Baseline" from page 35 of the opening brief of the Imperial County Air Pollution Control District.
- 7. The chart entitled "Table 5: Effects With and Without Implementation of SSHCS" from page 36 of the opening brief of the Imperial County Air Pollution Control District.
- 8. The quantitative analysis of potential air effects from a dried up Salton Sea bed. (Alene Taber directed the Court's attention to the portion of the reporter's transcript found in Administrative Record #1 at pages 522493 through 522495.)
- 9. The No Project alternative verses baseline for the Salton Sea. (Lisabeth Rothman directed the Court to Administrative Record 3-17-513818 through 3-17-513827. Antonio Rossmann distributed a diagram to the Court and counsel.)

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CASE NO. : JCCP 4353

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CASE TITLE: QSA COORDINATED CIVIL CASES

PROCEEDINGS: COURT TRIAL - DAY ONE

10. The October 2003 With Project addendums – HCP1, HCP2, and SSHCS. (Alene Taber directed the Court to Administrative Record 3-11-200190 through 3-11-200191. Mark Hattam directed the Court to Administrative Record 3-3-30109_37 and 3-3-30109_38.) The Court directed Mark Hattam to provide the Court with citation to the place where the Final EIR discusses that 2030 is not an actual time frame but may be shortened.

- 11. The mitigation increment verses the restoration increment.
- 12. The chart entitled "Table 2: Secretary's Priority 3(a) Colorado River Water Distribution for IIP" from page 14 of the opening brief of the Imperial County Air Pollution Control District.
- 13. The chart entitled "Table 1-2: Comparison of Original and Revised QSA Delivery Schedules" from Administrative Record 3-14-400128_33.
- 14. The use of fallowing to create mitigation water. (The Court advised counsel that the Court did not understand the discussion of fallowing by Imperial Irrigation District in their response brief at page 62, lines 1 through 8. Counsel directed the Court to Administrative Record 3-14-400070, Administrative Record 101804_320 to 101804_321, and Administrative Record 3-12-204938. Mark Hattam filed a document entitled "Lodgment of Demonstrative Exhibit ("Water Lost to Salton Sea Examples") Used by Imperial Irrigation District at Trial" with the Court and distributed copies to counsel.)
- 15. Validation, as it pertains to possible violation of the substantial rights of the parties in CEQA.
- 16. Validation, as it pertains to the approval of the 13 QSA contracts by Imperial Irrigation District. (Counsel directed the Court to Administrative Record 3-3-30080, 30101, 30113, 30129, and 30130.)

The Court advised counsel to reflect on the questions posed by the Court when counsel formulates their general oral arguments to be given tomorrow. The Court indicated that arguments on validation regarding federal jurisdiction in the broader sense (but not in the context of the Indians) and how CEQA relates to this project would be helpful.

The Court announced the evening recess at 3:55 p.m. and ordered this matter continued to November 14, 2012 at 9:00 a.m. in this department.

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CASE TITLE : QSA COORDINATED CIVIL CASES BY: <u>C. BEEBOUT,</u>

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

DATE/TIME

: NOVEMBER 14, 2012 9:00 a.m.

: LLOYD G. CONNELLY

DEPT. NO CLERK : 33 : C. BEEBOUT

JUDGE REPORTER

: V. HALEY, #10771

ATTENDAN

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: R. SANCHEZ-JACOBO

COORDINATED PROCEEDINGS SPECIAL TITLE (RULE 1550(b))

QSA COORDINATED CIVIL CASES

Case No.: JCCP 4353

Nature of Proceedings:

COURT TRIAL - DAY TWO

The above-entitled cause came before this Court on this date for further trial with the following counsel/parties present:

Party	Counsel
Barioni/Krutzsch Parties	Lowell F. Sutherland
(Donald V. Barioni, Beach Line Citrus LLC, Bixby Land	
Company, Robert S. Chell, Coast Imperial Partners, Donald	
L. Howard and Kimberlee A. Howard as trustees, Chrisman	
B. Jackson, Mary A. Jackson and Chrisman B. Jackson as	
trustees, John D. Jackson Jr. individually and as trustee,	
Margaret M. Lillywhite and Daniel H. Lillywhite as trustees,	
Daniel H. Lillywhite and Robin J. Lillywhite as trustees,	
Rosal Randes, Sali Properties, The Sinclair Ranches LLC,	
TAC Land LLC, and Charles H. Westmoreland and Alexa	
Westmoreland as trustees)	
City of Escondido	Donald R. Lincoln
Coachella Valley Water District	Michelle Ouellette, Melissa R. Cushman
	and Steven B. Abbott
County of Imperial	Antonio Rossmann, Roger B. Moore
	and Barton Lounsbury
Cuatro Del Mar	Ernest Stone, Joe Salazar and
	Malissa Hathaway McKeith
Imperial County Air Pollution Control District	Alene M. Taber, Kathryn M. Casey
	and Jonathan E. Shardlow
Imperial Irrigation District	Mark J. Hattam, Jeffrey A. Chine and
	Kathryn D. Horning
Ronald Leimgruber	In propria persona
Metropolitan Water District of Southern California	Adam C. Kear & John Schlotterbeck, Sr.
Morgan/Holtz Parties	Thomas S. Virsik
(Walter Holtz, Toni Holtz, Michael W. Morgan, John J.	
Elmore, Richard Elmore, Gary Foster and Rodney Foster)	
Protect Our Water and Environmental Rights (POWER)	Rose M. Zoia
San Diego County Water Authority	Lisabeth D. Rothman, Amy M. Steinfeld
	and Daniel S. Hentschke
State of California by and through the Department of Water	Clifford T. Lee
Resources and the Department of Fish and Game	
Vista Irrigation District	Joel D. Kuperberg

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SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SACRAMENTO

DATE : NOVEMBER 14, 2012

CASE NO. : JCCP 4353

CASE TITLE : QSA COORDINATED CIVIL CASES

: 4353MO111412

BY: C. BEEBOUT,

CASE NUMBER: JCCP 4353 DEPARTMENT: 33

CASE TITLE: QSA COORDINATED CIVIL CASES

PROCEEDINGS: COURT TRIAL - DAY TWO

Metropolitan Water District of Southern California filed their Lodgement of Administrative Record Cites, Request for Judicial Notice, and Declaration of John D. Schlotterbeck in Support Thereof.

The Court heard oral arguments during the morning session from Antonio Rossmann (County of Imperial), Alene M. Taber (Imperial County Air Pollution Control District), Rose M. Zoia (POWER), Thomas S. Virsik (Morgan/Holtz Parties), Lowell F. Sutherland (Barioni/Krutzsch Parties), Ernest Slome (Cuatro Del Mar), Joe Salazar (Cuatro Del Mar), Mark J. Hattam (Imperial Irrigation District), John Schlotterbeck, Sr. (Metropolitan Water District of Southern California), Adam C. Kear (Metropolitan Water District of Southern California), and Lisabeth D. Rothman (San Diego County Water Authority).

Mark Hattam advised the Court that Imperial Irrigation District will file a cite-finding tool. Imperial Irrigation District also filed their Lodgment of Demonstrative Exhibit ("QSA Timeline") Used by Imperial Irrigation District at Trial, their Notice of Citation References to Validation Administrative Record re Table 1-1 in Transfer Project Final EIR, and their Notice of Citation References to Model Data.

Lisabeth Rothman advised the Court that San Diego County Water Authority will file a more user-friendly compendium and a list of citations.

The Court took the lunch recess from 11:40 a.m. to 1:30 p.m.

The Court heard oral arguments during the afternoon session from Clifford T. Lee (State of California), Steven B. Abbott (Coachella Valley Water District), Donald R. Lincoln (City of Escondido), Joel D. Kuperberg (Vista Irrigation District), and Malissa Hathaway McKeith (Cuatro Del Mar).

The Court heard second-round arguments during the afternoon session from Antonio Rossmann (County of Imperial), Alene M. Taber (Imperial County Air Pollution Control District), Rose M. Zoia (POWER), Thomas S. Virsik (Morgan/Holtz Parties), Ernest Slome (Cuatro Del Mar), Malissa Hathaway McKeith (Cuatro Del Mar), Mark J. Hattam (Imperial Irrigation District), Lisabeth D. Rothman (San Diego County Water Authority), Joel D. Kuperberg (Vista Irrigation District), John Schlotterbeck, Sr. (Metropolitan Water District of Southern California), and Donald R. Lincoln (City of Escondido).

The Court heard third-round arguments during the afternoon session from Antonio Rossmann (County of Imperial), Malissa Hathaway McKeith (Cuatro Del Mar), John Schlotterbeck, Sr. (Metropolitan Water District of Southern California), and Michelle Ouellette (Coachella Valley Water District).

The Court took this matter under submission at 3:47 p.m.

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CERTIFICATE OF SERVICE BY MAILING (C.C.P. Sec. 1013a(4))

- I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the **JUDGMENT** (**ECU01649/04CS00875**) by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown on the attached service list.
- I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

Dated: July 31, 2013 By: <u>C. BEEBOUT</u>, Chule

Coordination Proceeding Special Title (Rule 1550(b)) QSA COORDINATION CIVIL CASES SERVICE LIST (revised 7/1/2013)

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Clifford T. Lee Attorney General 455 Golden Gate Ave #11000 San Francisco, CA 94102	Michelle Ouellette Melissa R. Cushman Best Best & Krieger LLP PO Box 1028 Riverside, CA 92502-1028
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Charles T. DuMars Patrick J. Redmond Law & Resource Planning Associates, PC 201 Third St NW #1750 Albuquerque, NM 87102	Marcia L. Scully, Linus S. Masouredis, John D. Schlotterbeck & Adam C. Kear Metropolitan Water District of Southern California 700 N. Alameda St. Los Angeles, CA 90012
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