

# VERDICTS & SETTLEMENTS

FRIDAY, JANUARY 31, 2014

## Environmental Law

### Breach of Contract

Water Rights

#### BENCH DECISION: Plaintiff

CASE/NUMBER: *Peter Michael Strub and others v. Palomar Mutual Water Company and others* (162650)

COURT/DATE: San Diego Superior / Nov. 25, 2013

JUDGE: Hon. Robert P. Dahlquist

#### ATTORNEYS:

Plaintiff — **Jeremy N. Jungreis, Karen E. Walter, Joel D. Kuperberg, Michelle Molko (Rutan & Tucker, Costa Mesa).**

Defendant — Michael A. Leone, Matthew M. Mahoney (Seltzer, Caplan, McMahon & Vitek, San Diego) for V/O Pauma Development; James R. Dodson, Jeffrey G. Scott (Law Offices of Scott & Jackson, San Diego) for Yuima Municipal Water District; Andrew B. Gagen, Arthur G. Kidman (Kidman Law LLP, Irvine) for Yuima Municipal Water District.

#### FACTS:

Peter Strub and several other plaintiffs filed a complaint against Palomar Mutual Water Co. and other defendants in 1953, seeking to enforce their senior water rights to groundwater in the Pauma Valley in and around the San Luis Rey River. The original parties to the dispute negotiated a Stipulated Judgment, which imposed certain “limitations” on defendants’ “right to develop, produce, divert, and control,” or otherwise “obtain” the disputed water and water rights. This current proceeding

pertained to a portion of the Stipulated Judgment, which prohibited defendants from withdrawing more than 1,350 acre-feet of water within any one calendar year from the portion of the area designated as the “Rincon Basin.”

Petitioner Rancho Pauma Mutual Water Co. is the current owner of some of the real property that was previously owned by the original plaintiffs. Respondent Yuima Municipal Water District is the successor in interest to Palomar Mutual Water Co., one of the original defendants.

#### PLAINTIFFS’ CONTENTIONS:

Rancho Pauma contended that the 1953 Stipulated Judgment creates a “hard cap” on the amount of water that defendants, including Yuima, may receive from the disputed groundwater. Rancho Pauma further asserted that Yuima violated the 1953 Stipulated Judgment by routinely taking or receiving more than 1,350 acre-feet of water per year from the disputed groundwater and that Yuima planned to significantly exceed this limitation in 2013 and beyond. Plaintiff argued that the hard cap applies with equal force today, as it did in the past to Yuima’s predecessors in interest in 1953. The passage of time and succession of property rights did not affect the enforceability the 1953 Stipulated Judgment under the court’s continuing jurisdiction.

Over the last three years, Yuima sought to unilaterally increase its groundwater production to nearly 3,000 acres-feet per year from as many as eight different wells.

#### DEFENDANTS’ CONTENTIONS:

Yuima contended that the 1953 Stipulated Judgment, as amended, created a 1350 acre feet per year right to withdraw Strub water

from the Rincon Basin for distribution and use on land within Yuima’s service area known as Improvement District ‘A,’ formerly known as the Rincon Ranch. Yuima contended that the 1968 amendment to the Strub Judgment, in which Yuima’s Improvement District A accepted responsibility to comply with the Stipulated Judgment, did not limit the distribution and use of Strub water from the Rincon Basin to Yuima’s service area outside of Improvement District A.

RESULT: The California Superior Court in north San Diego County found in favor of Rancho Pauma and other plaintiffs, finding that the Stipulated Strub Judgment the original parties entered into in 1953, restricts Yuima and other defendants to pumping no more than 1,350 acre-feet a year of groundwater from the Rincon Basin groundwater, from no more than five wells. The court found that the limitation is a hard cap.

The court denied plaintiffs demand for Yuima to reduce its withdrawal of Strub water for next year in correspondence with the known violations, for Yuima to install certain equipment to ensure plaintiff that Yuima will not exceed the 1350 acre-feet per year cap in the future, and that the court award attorneys’ fees and costs.

The court allowed for Yuima to determine the manner in which it will comply with the judgment, now that Yuima has been made aware of its violation of the judgment, as interpreted by the court.

#### OTHER INFORMATION:

Yuima’s Notice of Appeal was filed on December 20, 2013. Yuima disputes the court’s interpretation of the 1953 Strub Stipulated Judgment, as amended.