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EXEMPT FROM FILING FEES
[Gov. Code, § 6103]

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 **Coordination Proceeding**
13 **Special Title (Rule 3.550(c))**

14 **ANTELOPE VALLEY GROUNDWATER**
15 **CASES**

16 **Included Actions:**

17 **Los Angeles County Waterworks District**
No. 40 v. Diamond Farming Co.
18 **Superior Court of California County of Los**
Angeles, Case No. BC 325 201

19 **Los Angeles County Waterworks District**
No. 40 v. Diamond Farming Co.
20 **Superior Court of California County of**
Kern, Case No. S-1500-CV-254-348

21 **Wm. Bolthouse Farms, Inc. v. City of**
Lancaster, Diamond Farming Co. v. City of
22 **Lancaster, Diamond Farming Co. v.**
23 **Palmdale Water Dist. Superior Court of**
California, County of Riverside,
24 **consolidated Actions, Case Nos. RIC 353**
840, RIC 344 436, RIC 344 668

25 -----
26 **AND RELATED ACTIONS.**
27
28

Judicial Council Coordination
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-049053

**STATE OF CALIFORNIA, SANTA
MONICA MOUNTAINS
CONSERVANCY, AND 50TH DISTRICT
AGRICULTURAL ASSOCIATION'S
OPPOSITION TO LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40'S MOTION FOR LEGAL
FINDINGS ON WATER CODE
REQUIREMENTS TO REPORT
EXTRACTION OF GROUNDWATER IN
LOS ANGELES COUNTY**

[Assigned for All Purposes to the Honorable
Jack Komar]

Date: February 14, 2012

Time: 9:00 a.m.

Dept: 15th Floor, Central Civil West

Action Filed: October 26, 2005

1 on which it seeks the Court's guidance is one that has never been decided before in a published
2 judicial opinion, and for which LA County Waterworks cites no authority to support its
3 conclusions. This Motion is clearly premature and the Court should not offer an advisory opinion
4 on this Motion that is not yet ripe for adjudication.

5 **II. CALIFORNIA WATER CODE SECTIONS 4999 THROUGH 5005 DO NOT RESULT IN THE**
6 **LOSS OR FORFEITURE OF ANY RIGHTS TO GROUNDWATER IN THIS BASIN**

7 LA County Waterworks further argues in its Motion that as a matter of law "a party's
8 failure to file the Notice as required by Water Code section 5001, is deemed to be a nonuse of
9 groundwater for reasonable and beneficial use, and a loss of a ground water right for each year in
10 which the Notice was required." (Motion p. 5.) Nowhere do Water Code sections 4999 through
11 5005 state that any water rights are forfeited when a party fails to provide the Notice of Extraction
12 and Diversion of Water required by section 5001 (Notice). The statute states that only if the
13 Notice requirement applies to an entity's extraction, and that entity fails to file the Notice, then its
14 water use might be deemed equivalent to a nonuse of water for beneficial use for the applicable
15 year. The form Notice requested by the State Water Resources Control Board (State Board) and
16 attached as Exhibit A to the Motion supports this interpretation, that failure to submit a Notice
17 when otherwise required creates, at most, a rebuttable presumption of non-use. (See Notice,
18 Exhibit A to Motion, p. 2.) The form Notice states that "there is no penalty for failure to file the
19 annual notice . . . persons who do not file notices may have difficulty in supporting a claim of
20 water use during a lawsuit." (*Ibid.*)

21 The statute and the State Board notably do not equate the failure to file the Notice with the
22 loss of any water rights. LA County Waterworks' reading of the statute adds additional content
23 and consequences into the statute that simply are not present in the statutory language. The
24 statute's purpose is to "establish a record of water use which can assist the court in determining
25 your rights." (*Ibid.*) It does not conclusively determine those rights and does not extinguish any
26 such rights by its plain meaning. For example, even if an entity fails to file the notice, but can
27 verify its claims of water rights in a given year, the statute does not impose a legal bar to
28 submitting that evidence to the Court and does not bar the Court from determining a party's water

1 rights claim for a beneficial use of water. The statute merely requires a record of such extraction,
2 but in no way bars a party from submitting evidence of its water rights.

3 Finally, the statute cannot and does not apply to the water rights of overlayers, or entities that
4 extract for nonconsumptive use or incidental consumptive use and cannot result in a forfeiture of
5 their rights. Overlying water rights to extract groundwater exist irrespective of the amount of
6 water extracted for beneficial use in the past. (*City of Barstow v. Mojave Water Agency*, (2000) 23
7 Cal.4th 1224, 1243-1249.) In addition, nonconsumptive or incidental consumptive users are not
8 required to have a water right to extract the groundwater they extract. (*City of Los Angeles v. City*
9 *of San Fernando*, (1975) 14 Cal.3d 199, 291-292.)¹ The statute does not apply to either of these
10 past, current or future pumpers in this adjudication.

11 **III. THE WATER CODE DOES NOT PROVIDE THAT REPORTS OF EXTRACTION** 12 **DETERMINATIVELY ESTABLISH HISTORICAL EXTRACTION AMOUNTS**

13 LA County Waterworks takes the statute even one step farther by suggesting that the
14 amount of water stated to have been extracted in a Notice is conclusive on that issue. While the
15 amount of water stated in a Notice may or may not be evidence of past use, there is nothing in the
16 Water Code that provides a court must deem the amount of water use claimed in a Notice as
17 conclusive. A court must be free to accept other evidence to support or contradict the assertion
18 that the amount of water which was claimed to be extracted in a Notice is or is not reliable.

19 **CONCLUSION**

20 This court should deny this Motion as it is not ripe and seeks an advisory opinion.
21 Moreover, the statute does not apply to overlayers and cannot result in a loss or forfeiture of any of
22 their water rights. A plain reading of the statute makes clear that the statute was never intended to
23 take away any water rights from entities in this adjudication. Nor should the court be required to
24 accept, without contradiction, the amount of water stated in a Notice as being the actual water

25 _____
26 ¹ LA County Waterworks also fails to mention that this adjudication not only includes
27 pumpers in Los Angeles County, but also pumpers in Kern County, who are not even required to
28 file the notice at issue in this motion. This would create an inequitable and absurd result where
entities from Kern County who did not provide the Notice would keep their rights and entities
from Los Angeles County would lose their rights.

1 extracted by any Notice-filer. Therefore, the Court should deny LA County Waterworks'
2 attempts to have the Court strip entities of their rights based on this statute.

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Dated: January 31, 2012

Respectfully Submitted,

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RICHARD M. MAGASIN
Supervising Deputy Attorney General



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*Attorneys for State of California, Santa
Monica Mountains Conservancy, and 50th
District Agricultural Association*

CERTIFICATE OF SERVICE

Case Name: Antelope Valley Groudwater
Cases

No. 1-05-CV-049053

I hereby certify that on January 31, 2012, I electronically filed the following document(s) with the Clerk of the Court by using the CM/ECF system:

**STATE OF CALIFORNIA, SANTA MONICA MOUNTAINS CONSERVANCY, AND
50TH DISTRICT AGRICULTURAL ASSOCIATION'S OPPOSITION TO LOS
ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S MOTION FOR LEGAL
FINDINGS ON WATER CODE REQUIREMENTS TO REPORT EXTRACTION OF
GROUNDWATER IN LOS ANGELES COUNTY**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 31, 2012, at Los Angeles, California.

Gwen Blanchard
Declarant


Signature