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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

16 ANTELOPE VALLEY GROUNDWATER  
17 CASES

Included Actions:

18 *Los Angeles County Waterworks District No. 40 v.*  
19 *Diamond Farming Co.*, Superior Court of  
20 California, County of Los Angeles, Case No. BC  
325201;

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

24 *Wm. Bolthouse Farms, Inc. v. City of Lancaster,*  
25 *Diamond Farming Co. v. City of Lancaster,*  
26 *Diamond Farming Co. v. Palmdale Water Dist.*,  
27 Superior Court of California, County of Riverside,  
Case Nos. RIC 353 840, RIC 344 436, RIC 344  
668

28 *Rebecca Lee Willis v. Los Angeles County*  
*Waterworks District No. 40, et al.*, Superior Court  
of California, County of Los Angeles, Case No.  
BC364533

*Richard Wood v. Los Angeles County Waterworks*  
*District No. 40, et al.*, Superior Court of  
California, County of Los Angeles, Case No.  
BC391869

**EXEMPT FROM FILING FEES  
UNDER GOVERNMENT CODE  
SECTION 6103**

Judicial Council Coordination  
Proceeding No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar

**PUBLIC WATER SUPPLIERS'  
OPPOSITION TO MOTION BY  
PRIVATE AND PUBLIC  
LANDOWNERS FOR ORDER  
APPROVING RULES AND  
REGULATIONS FOR  
APPOINTMENT AND ELECTION  
OF WATERMASTER BOARD  
MEMBERS; DECLARATION OF  
JEFFREY V. DUNN**

Date: September 8, 2016  
Time: 9:00 a.m.  
Dept.: Room 222, LASC  
Judge: Jack Komar, Presiding

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1 Los Angeles County Waterworks District No. 40, Rosamond Community Services  
2 District, Littlerock Creek Irrigation District, Palm Ranch Irrigation District, Desert Lake  
3 Community Services District, Palmdale Water District, Quartz Hill Water District, and California  
4 Water Service Company (collectively, “Public Water Suppliers”) hereby submit opposition to the  
5 motion by private and public landowners for an order approving certain rules and regulations for  
6 the appointment and election of their water master board members (“Motion”) on the following:

7 1. The proposed rules contradict the Court-adopted physical solution  
8 (“Physical Solution”); and

9 2. The proposed rules unfairly single out the Public Water Suppliers and other  
10 groundwater right holders on Exhibit 3 to the Court-adopted physical solution, and seek to  
11 deprive them of voting rights under the Physical Solution that are provided to all other parties,  
12 including other public entities.<sup>1</sup>

13 The proposed rules overturn the voting rights in Section 18.1.1 by wrongfully eliminating  
14 the Public Water Suppliers’ right to participate in the election of certain water master board  
15 members, when the Public Water Suppliers become successors in interests to the parties listed on  
16 Exhibit 4.

17 Section 18.1.1 entitles the parties listed on Exhibit 4 and their successors in interest to  
18 elect two out of the five water master board members. (Declaration of Jeffrey V. Dunn (“Dunn  
19 Decl.”) at Ex. “A” at §18.1.1 [the landowner board members are “selected by majority vote of the  
20 landowners identified on Exhibit 4 (**or their successors in interest**)”] [emphasis added].) Each  
21 party in Exhibit 4 has a voting right that correlates with its “proportionate share of the total  
22 Production Rights identified in Exhibit 4.” (*Id.*) **There is no exception.**

23 Section 5.A. of the proposed rules wrongly provides:

24 Successors in interest to Exhibit 4 Parties do not include Non-  
25 Overlying Production Right holders as discussed in Section 16.2 of  
26 the Judgment, because they would not hold rights subject to the  
27 same limitations as Overlying Production Rights holders listed on

28 <sup>1</sup> All exhibit and section references are to the Court-adopted physical solution unless otherwise indicated.

1 original Exhibit 4. Accordingly, any Non-Overlying Production  
2 Right holder that acquires Exhibit 4 Overlying Production Rights  
3 may not use the acquired Overlying Production Rights to nominate,  
4 vote for, or otherwise participate in the election of the two  
5 landowner Watermaster representatives or their alternates.

6 Contrary to the proposed rules, Section 16.2 expressly provides that when a Non-  
7 Overlying Production Right holder acquires Overlying Production Rights, the acquired rights  
8 remain on Exhibit 4 as an Overlying Production Right and entitle the holder of the acquired rights  
9 to vote under Section 18.1.1 for Exhibit 4 water master board seats.

10 Section 16.2 provides in its entirety: “Overlying Production Rights that are transferred to  
11 Non-Overlying Production Right holders shall remain on Exhibit 4 and be subject to adjustment  
12 as provided in Paragraph 18.5.10, but may be used anywhere in the transferee’s service area.”  
13 (Dunn Decl., Ex. “A” at §16.2 [emphasis added].) “Overlying Production Rights” are defined  
14 under the Physical Solution as “[t]he rights held by the Parties identified in Exhibit 4,” and “Non-  
15 Overlying Production Rights” are defined as “[t]he rights held by the Parties identified in Exhibit  
16 3.” (*Id.* at §§ 3.5.21 & 3.5.26.)

17 A plain reading of these provisions shows that when a party listed in Exhibit 4 transfers its  
18 “Overlying Production Right” to a party listed in Exhibit 3 party, the transferred right remains  
19 unequivocally an “Overlying Production Right” even though it is held by an Exhibit 3 party.  
20 Furthermore, that transferred right shall be identified on Exhibit 4 as an “Overlying Production  
21 Right,” which entitles the holder of that right to vote for the two Exhibit 4 water master board  
22 members. (Dunn Decl., Ex. “A” at §18.1.1 [the Exhibit 4 Watermaster board members shall be  
23 “selected by majority vote of the landowners identified on Exhibit 4 (or their successors in  
24 interest) based on their proportionate share of the total Production Rights identified in Exhibit  
25 4”].)

26 Under the Court-adopted Physical Solution, when the Public Water Suppliers, all of whom  
27 are listed on Exhibit 3, acquire “Overlying Production Rights,” they assume the obligations,  
28 duties, and rights of those acquired rights, including the right to participate in the election of

1 water master board members that represent the acquired “Overlying Production Rights.” To  
2 conclude otherwise would unfairly burden Public Water Suppliers with the obligations and duties  
3 of the “Overlying Production Rights” without the full benefits of such rights. It would also  
4 contravene the unequivocal language in Section 18.1.1.

5 If the Court adopts the proposed rules, it would result in an inequitable scenario under  
6 which Exhibit 4 water master board members would no longer be elected based on each Exhibit 4  
7 right holder’s proportionate share of production rights. Instead, voting rights could be  
8 concentrated and controlled by only a few Exhibit 4 parties.

9 For example, if urbanization continues in the Antelope Valley and Public Water Suppliers  
10 acquire 75 percent of Exhibit 4 allocations in order to supply new residents and businesses with  
11 water, the proposed rules would wrongly allow Exhibit 4 parties who are not Public Water  
12 Suppliers to have 100 percent of the voting power to elect the two Exhibit 4 water master board  
13 members even though they would have only 25 percent of Exhibit 4 allocations.

14 The proposed rules would wrongly deny Public Water Suppliers “to nominate . . . or  
15 otherwise participate in the election of the two landowner Watermaster representatives or their  
16 alternates.” (Proposed rules, Section 5.A.) The plain language of Section 18.1.1 and fundamental  
17 rules of fairness requires that when Public Water Suppliers assume duties and obligations of the  
18 Exhibit 4 rights, they are entitled to the benefits of such rights.

19 There is no logic to the flawed proposed rules. The proposed rules provide that Exhibit 3  
20 parties cannot participate in the election even if they acquire Exhibit 4 rights, because Exhibit 3  
21 parties may potentially use their Exhibit 4 rights anywhere in their service area, even if they only  
22 use their Exhibit 4 water on their property like any other Exhibit 4 parties. (Proposed Rules,  
23 Section 5.A.) When a Public Water Supplier acquires an Exhibit 4 allocation and then decides to  
24 use groundwater for exclusive use on its property similar to other public agencies and landowners  
25 listed on Exhibit 4, the Public Water Supplier could not participate in the election of the Exhibit 4  
26 water master board members. Stated simply, there is no legitimate basis to treat similarly situated  
27 parties differently under the flawed proposed rules.

1 To the extent the moving parties contend that their proposed rules promote diversity of  
2 interests on the Watermaster board, the Physical Solution already contains such provisions.  
3 Section 18.1.1 requires the two Exhibit 4 Watermaster board members to be “landowner Parties.”  
4 (Dunn Decl., Ex. “A” at §18.1.1.) While “public agencies and members of the Non-Pumper and  
5 Small Pumper Classes,” who are also Exhibit 4 right holders, may participate in the election  
6 process, they cannot be Exhibit 4 board members. (*Id.*) Thus, even if the Public Water Suppliers  
7 were to acquire 99 percent of Exhibit 4 production rights, they cannot obtain additional  
8 representation on the Watermaster board by electing themselves to be the Exhibit 4 board  
9 members.

10 Appendix A to the proposed rules fails to omit “public agencies and members of the Non-  
11 Pumper and Small Pumper Classes” as eligible Exhibit 4 Watermaster board members. Moving  
12 parties’ proposed rules violate Section 18.1.1.

13 Any rules governing the election process of the Watermaster board members must be  
14 consistent with the Physical Solution. Consequently, the Motion should be denied or,  
15 alternatively, modified to be consistent with the Court-adopted Physical Solution.

16  
17 Dated: August 25, 2016

BEST BEST & KRIEGER LLP

18  
19 By: 

20 ERIC L. GARNER  
21 JEFFREY V. DUNN  
22 WENDY Y. WANG  
23 Attorneys for Defendant  
24 LOS ANGELES COUNTY  
25 WATERWORKS DISTRICT NO. 40  
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**DECLARATION OF JEFFREY V. DUNN**

I, Jeffrey V. Dunn, declare as follows:

1. I am a partner with the law firm of Best Best & Krieger LLP, counsel for defendant Los Angeles County Waterworks District No. 40 (“District No. 40”). I have personal knowledge of the facts stated herein and, if called upon to do so, I could testify to these facts.
2. Attached as Exhibit “A” are true and correct copies of excerpts from the Court-adopted physical solution.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 25th day of August, 2016, at Irvine, California.

  
\_\_\_\_\_  
Jeffrey V. Dunn

# **EXHIBIT A**



1                               **3.5.17 In Lieu Production**. The amount of Imported Water used by a  
2 Producer in a Year instead of Producing an equal amount of that Producer’s Production Right.

3                               **3.5.18 Material Injury**. Material Injury means impacts to the Basin caused  
4 by pumping or storage of Groundwater that:

5                                       **3.5.18.1**           Causes material physical harm to the Basin, any  
6 Subarea, or any Producer, Party or Production Right, including, but not limited to, Overdraft,  
7 degradation of water quality by introduction of contaminants to the aquifer by a Party and/or  
8 transmission of those introduced contaminants through the aquifer, liquefaction, land subsidence and  
9 other material physical injury caused by elevated or lowered Groundwater levels. Material physical  
10 harm does not include "economic injury" that results from other than direct physical causes, including  
11 any adverse effect on water rates, lease rates, or demand for water.

12                                       **3.5.18.2**           If fully mitigated, Material Injury shall no longer be  
13 considered to be occurring.

14                               **3.5.19 Native Safe Yield**. Naturally occurring Groundwater recharge to  
15 the Basin, including “return flows” from pumping naturally occurring recharge, on an average  
16 annual basis. Imported Water Return Flows are not included in Native Safe Yield.

17                               **3.5.20 New Production**. Any Production of Groundwater from the Basin  
18 not of right under this Judgment, as of the date of this Judgment.

19                               **3.5.21 Non-Overlying Production Rights**. The rights held by the Parties  
20 identified in Exhibit 3, attached hereto and incorporated herein by reference.

21                               **3.5.22 Non-Pumper Class**. All private (i.e., non-governmental) Persons  
22 and entities that own real property within the Basin, as adjudicated, that are not presently  
23 pumping water on their property and did not do so at any time during the five Years preceding  
24 January 18, 2006. The Non-Pumper Class includes the successors-in-interest by way of purchase,  
25 gift, inheritance, or otherwise of such Non-Pumper Class members’ land within the Basin. The  
26 Non-Pumper Class excludes (1) all Persons to the extent their properties are connected to a  
27 municipal water system, public utility, or mutual water company from which they receive water  
28

1 service, (2) all properties that are listed as “improved” by the Los Angeles County or Kern  
2 County Assessor's offices, unless the owners of such properties declare under penalty of perjury  
3 that they do not pump and have never pumped water on those properties, and (3) those who opted  
4 out of the Non-Pumper Class. The Non-Pumper Class does not include landowners who have  
5 been individually named under the Public Water Suppliers' cross-complaint, unless such a  
6 landowner has opted into such class.

7 **3.5.23 Non-Pumper Class Judgment.** The amended final Judgment that  
8 settled the Non-Pumper Class claims against the Public Water Suppliers approved by the Court  
9 on September 22, 2011.

10 **3.5.24 Non-Stipulating Party.** Any Party who had not executed a  
11 Stipulation for Entry of this Judgment prior to the date of approval of this Judgment by the Court.

12 **3.5.25 Overdraft.** Extractions in excess of the Safe Yield of water from  
13 an aquifer, which over time will lead to a depletion of the water supply within a groundwater  
14 basin as well as other detrimental effects, if the imbalance between pumping and extraction  
15 continues.

16 **3.5.26 Overlying Production Rights.** The rights held by the Parties  
17 identified in Exhibit 4, attached hereto and incorporated herein by reference.

18 **3.5.27 Party (Parties).** Any Person(s) that has (have) been named and  
19 served or otherwise properly joined, or has (have) become subject to this Judgment and any prior  
20 judgments of this Court in this Action and all their respective heirs, successors-in-interest and  
21 assigns. For purposes of this Judgment, a “Person” includes any natural person, firm, association,  
22 organization, joint venture, partnership, business, trust, corporation, or public entity.

23 **3.5.28 Pre-Rampdown Production.** The reasonable and beneficial use of  
24 Groundwater, excluding Imported Water Return Flows, at a time prior to this Judgment, or the  
25 Production Right, whichever is greater.

26 **3.5.29 Produce(d).** To pump Groundwater for existing and future  
27 reasonable beneficial uses.

1 Producer must Produce its full Production Right before any Carry Over water, or any other water,  
2 is Produced. Carry Over water will be Produced on a first-in, first-out basis. At the end of the  
3 Carry Over period, the Producer may enter into a Storage Agreement with the Watermaster to  
4 store unproduced portions, subject to terms and conditions in the Watermaster’s discretion. Any  
5 such Storage Agreements shall expressly preclude operations, including the rate and amount of  
6 extraction, which will cause a Material Injury to another Producer or Party, any subarea or the  
7 Basin. If not converted to a Storage Agreement, Carry Over water not Produced by the end of the  
8 tenth Year reverts to the benefit of the Basin and the Producer no longer has a right to the Carry  
9 Over water. The Producer may transfer any Carry Over water or Carry Over water stored  
10 pursuant to a Storage Agreement.

11 **16. TRANSFERS.**

12 **16.1 When Transfers are Permitted.** Pursuant to terms and conditions to be  
13 set forth in the Watermaster rules and regulations, and except as otherwise provided in this  
14 Judgment, Parties may transfer all or any portion of their Production Right to another Party so  
15 long as such transfer does not cause Material Injury. All transfers are subject to hydrologic  
16 review by the Watermaster Engineer.

17 **16.2 Transfers to Non-Overlying Production Right Holders.** **Overlying**  
18 **Production Rights that are transferred to Non-Overlying Production Right holders shall remain on**  
19 **Exhibit 4** and be subject to adjustment as provided in Paragraph 18.5.10, but may be used  
20 anywhere in the transferee’s service area.

21 **16.3 Limitation on Transfers of Water by Antelope Valley United Mutuals**  
22 **Group.** After the date of this Judgment, any Overlying Production Rights pursuant to Paragraph  
23 5.1.1, rights to Imported Water Return Flows pursuant to Paragraph 5.2, rights to Recycled Water  
24 pursuant to Paragraph 5.3 and Carry Over water pursuant to Paragraph 15 (including any water  
25 banked pursuant to a Storage Agreement with the Watermaster) that are at any time held by any  
26 member of the Antelope Valley United Mutuals Group may only be transferred to or amongst  
27 other members of the Antelope Valley United Mutuals Group, except as provided in Paragraph  
28

1 Edwards Air Force Base or Plant 42, provided such change in the point of extraction does not  
2 cause Material Injury. In exercising its discretion under this Paragraph 17.2, the United States  
3 shall consider information in its possession regarding the effect of Production from the intended  
4 new point of extraction on the Basin, and on other Producers. Any such change in point(s) of  
5 extraction shall be at the expense of the United States. Nothing in this Paragraph is intended to  
6 waive any monetary claim(s) another Party may have against the United States in federal court  
7 based upon any change in point of extraction by the United States.

8 **18. WATERMASTER**

9 **18.1 Appointment of Initial Watermaster.**

10 **18.1.1** Appointment and Composition: The Court hereby appoints a  
11 Watermaster. The Watermaster shall be a five (5) member board composed of one representative  
12 each from AVEK and District No. 40, a second Public Water Supplier representative selected by  
13 District No. 40, Palmdale Water District, Quartz Hill Water District, Littlerock Creek Irrigation  
14 District, California Water Service Company, Desert Lake Community Services District, North  
15 Edwards Water District, City of Palmdale, City of Lancaster, Palm Ranch Irrigation District, and  
16 Rosamond Community Services District, and two (2) landowner Parties, exclusive of public  
17 agencies and members of the Non-Pumper and Small Pumper Classes, selected by majority vote  
18 of the landowners identified on Exhibit 4 (or their successors in interest) based on their  
19 proportionate share of the total Production Rights identified in Exhibit 4. The United States may  
20 also appoint a non-voting Department of Defense (DoD) Liaison to the Watermaster committee to  
21 represent DoD interests. Participation by the DoD Liaison shall be governed by Joint Ethics  
22 Regulation 3-201. The opinions or actions of the DoD liaison in participating in or contributing  
23 to Watermaster proceedings cannot bind DoD or any of its components.

24 **18.1.2** Voting Protocol for Watermaster Actions:

25 **18.1.2.1** The Watermaster shall make decisions by unanimous vote  
26 for the purpose of selecting or dismissing the Watermaster Engineer.  
27  
28

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**PROOF OF SERVICE**

I, Rosanna R. Pérez, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On August 25, 2016, I served the following document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO MOTION BY PRIVATE AND PUBLIC LANDOWNERS FOR ORDER APPROVING RULES AND REGULATIONS FOR APPOINTMENT AND ELECTION OF WATERMASTER BOARD MEMBERS; DECLARATION OF JEFFREY V. DUNN**



**BY ELECTRONIC TRANSMISSION.** I caused such document(s) to be electronically served, via One Legal, to all parties appearing on the [www.scefiling.org](http://www.scefiling.org) electronic service list for the Antelope Valley Groundwater Cases; proof of electronic-filing through One Legal is then printed and maintained with the original documents in our office. Electronic service is complete at the time of transmission. My electronic notification email address is Rosanna.perez@bbklaw.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 25, 2016, at Los Angeles, California.

  
Rosanna R. Pérez

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