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11/30/2016

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to Gov't. Code § 6103

10 Attorneys for Cross-Complainants,
ANTELOPE VALLEY EAST – KERN WATER AGENCY

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14 Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination Proceeding No. 4408

15 ANTELOPE VALLEY
16 GROUNDWATER CASES

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar
Department 17C

17 Including Consolidated Actions:
18 Los Angeles County Waterworks District No.
40 v. Diamond Farming Co.
19 Superior Court of California, County of Los
Angeles, Case No. BC 325 201

**SUPPLEMENTAL DECLARATION OF
LELAND MCELHANEY IN SUPPORT OF
AVEK'S DISQUALIFICATION MOTION**

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

DATE: December 7, 2016
TIME: 9:00 a.m.
DEPT: Room 222
Stanley Mosk Courthouse
Los Angeles, California

23 **Wm. Bolthouse Farms, Inc. v. City of**
Lancaster
24 **Diamond Farming Co. v. City of Lancaster**
25 **Diamond Farming Co. v. Palmdale Water**
Dist.

Judge: Hon. Jack Komar
Complaint Filed: 9/22/2005
Trial Date:

26
27 AND RELATED ACTIONS.

1 I, LELAND P. MCELHANEY, declare:

2 1. I am an attorney at law duly licensed to practice in all courts of the State of California and am a
3 principal in the law firm of Brunick, McElhaney & Kennedy PLC, counsel of record for cross-
4 complainant the Antelope Valley East Kern Water Agency (“AVEK”) in these consolidated proceedings.
5 I have personal knowledge of all of the matters set forth herein, and if called as a witness, I could and
6 would testify competently thereto.

7 2. This supplemental declaration is submitted in response to the opposition to AVEK’s motion to
8 disqualify Best Best & Krieger (“BB&K”) from representing the Los Angeles County Waterworks
9 District No. 40 (“District No. 40”) or any other party in the Antelope Valley Groundwater (“AVG”)
10 litigation.

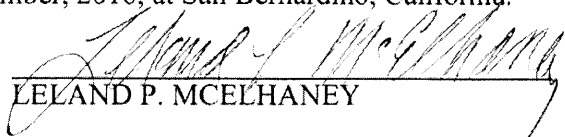
11 3. The memorandum in opposition to the motion (“Oppo.” or “Opposition”) and the respective
12 opposition declarations of Adam Arika (“Arika Decl.”) and Jeffrey V. Dunn (“Dunn Decl.”) all reference
13 a contract dated July 17, 1970 between AVEK and District No. 40’s alleged “predecessors in interest,”
14 which states AVEK would “assist” the predecessors in interest in retaining their rights in the groundwater
15 supply in the event of “an adjudication of the groundwater basin.” (Oppo., 1:16-18; Arika Decl., 3:11-16;
16 Dunn Decl., 4:10-17.) Nonetheless, there is and was no agreement between AVEK and District No. 40
17 that, in doing so, AVEK would be required to give up its own claimed rights to the groundwater supply.
18 Again, as noted in AVEK’s original moving papers, AVEK and District No. 40 were at complete
19 loggerheads in these consolidated proceedings over a number of issues, including: (1) the right to return
20 flows resulting from State Water Project water imported into the Antelope Valley Basin by AVEK; and
21 (2) whether AVEK and other private and public landowners should be liable for a portion of the Willis
22 Class attorney fees.

23 4. The Opposition contends that the respective interests of AVEK and District No. 40 are aligned on
24 certain issues and matters relative to the AVG litigation. (Oppo., 1:23-2:3.) That is true. However, it is
25 equally true that on a number of other issues and matters the two entities possess differing interests and
26 have taken and continue to take diametrically opposed positions. This has resulted in direct conflicts
27 between AVEK and District No. 40, and BB&K has served as an enabler and facilitator of those
28 conflicts.

1 5. Remarkably, the Opposition also claims that “AVEK cannot even establish that District No. 40
2 and AVEK will have any ongoing dispute in this litigation, and in fact their interests are aligned as to
3 remaining claims.” (Oppo., 8:21-23.) To the same effect, Adam Arika’s supporting declaration avers
4 that “adversity ended when AVEK and District No. 40 settled their dispute by stipulating to a physical
5 solution . . .” (Ariki Decl., 3:23-25.) Those twin claims are remarkable because, during the last several
6 months and continuing into the present, the Public Water Suppliers (including District No. 40), on the
7 one hand, and AVEK and other private and public landowners, on the other hand, have taken
8 diametrically opposed positions as to whether District No. 40 and the other public water suppliers should
9 be allowed to vote for the election of landowner representatives to the Watermaster Board.

10 6. Indeed, at the hearing on December 7, 2016, BB&K will be in the extremely awkward and
11 embarrassing position of arguing that the disqualification motion should be denied because “adversity”
12 between the AVEK and District No. 40 has “ended,” while also arguing on the landowners’ separate
13 motion for approval of rules governing election of the landowner representatives that District No. 40
14 should be allowed to participate in the election of the two landowner representatives to the Watermaster
15 Board, which position is directly opposed by AVEK and other private and public landowner parties.
16 Accordingly, within the space of a few minutes or hours on December 7, 2016, BB&K will argue that
17 adversity between AVEK and District No. 40 has ended, while at the same time dramatically
18 demonstrating that it has not.

19 I declare under the penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct. Executed this 29th day of November, 2016, at San Bernardino, California.

21 
22 LELAND P. MCELHANEY
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1 **BANKS & WATSON**
2 **CASE NAME: ANTELOPE VALLEY GROUNDWATER CASES**
3 **COURT: Santa Clara County Superior Court**
4 **CASE NO: CGC-13-533134 (JCCP No. 4408)**

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF SACRAMENTO)

9 At the time of service, I was over 18 years of age and not a party to this action. My business
10 address is 901 F Street, Suite 200, Sacramento, California 95814. My electronic address is jyoshida@bw-
11 firm.com.

12 On November 30, 2016, I served the within copy of:

13 **SUPPLEMENTAL DECLARATION OF LELAND MCELHANEY IN SUPPORT OF AVEK'S**
14 **DISQUALIFICATION MOTION**

15 on the interested parties in this action served in the following manner:

16 (✓) **BY ELECTRONIC FILING** – I caused the document(s) listed above to be transmitted *via*
17 Odyssey File & Serve to all parties appearing on the electronic services list for the Antelope
18 Valley Groundwater matter; proof of electronic filing through Odyssey File & Serve is then
19 printed and maintained in our office. Electronic service is complete at the time of transmission.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed on November 30, 2016, at Sacramento, California.

22 _____
23 Janna Yoshida
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