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Government Code § 6103

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Rosamond Community Services District
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
9

10 ANTELOPE VALLEY GROUNDWATER
11 CASES

12 Included Actions:
13 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co.
14 Superior Court of California, County of
Los Angeles, Case No. BC325201;
15 Los Angeles County Waterworks District
16 No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
17 Case No. S-1500-CV-254-348
18 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
19 Lancaster, Diamond Farming Co. v. Palmdale
Water Dist., Superior Court of California
20 County of Riverside, consolidated actions; Case
Nos. RIC 353 840, RIC 344 436, RIC 344 668.
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LASC Case No. BC 325201

Judicial Council Coordination
Proceeding No. 4408

CLASS ACTION

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

**REPLY OF WOOD CLASS SETTLING
DEFENDANTS IN SUPPORT OF
MOTION TO BE RELIEVED OF ALL
COURT ORDERS FOR PAYMENT OF
COURT-APPOINTED EXPERT FEES
AND COSTS**

Date: January 7, 2014
Time: 9:00 a.m.
Dept.: TBD

Trial Date: February 10, 2014 (Phase V)

{00054305.3 }

1 **I. INTRODUCTION.**

2 Los Angeles County Waterworks District No. 40 (“District 40”) opposes the motion of the
3 Wood Class Settling Defendants¹ to be relieved of all court-appointed expert fees and costs
4 (“Motion”) on the sole theory that the Settling Defendants must continue to fund the court-appointed
5 expert until such time as the Wood Class’ water rights are established and quantified. District 40 is
6 wrong. The court-appointed expert was retained by the Court in response to the operative Wood Class
7 First Amended Complaint - - a complaint which seeks to defend the members of the Wood Class
8 against claims of prescription asserted by various public agency water suppliers. That issue, as to the
9 Settling Defendants, is now moot. Because the Wood Class and Settling Defendants have fully and
10 finally resolved all of the claims in the Wood Class First Amended Complaint as among themselves,
11 the Settling Defendants should have no continuing obligation to fund the work of the court-appointed
12 expert. The Motion should be granted.

13 **II. THE PRIMARY OBJECTIVE OF THE WOOD CLASS FIRST AMENDED**
14 **COMPLAINT IS NOT A QUANTIFICATION OF WATER RIGHTS.**

15 The Wood Class’ First Amended Complaint, filed June 20, 2008, defines the “Nature of
16 the Action” as follows:

17 “This action is necessary in that defendants assert a common law
18 prescriptive right to the groundwater in the Basin which right they claim
19 is superior to that of Plaintiff and the Class. By definition, a
20 prescriptive right requires a wrongful taking of non-surplus water
21 from the Basin, in an open, notorious, continuous, uninterrupted,
22 hostile and adverse manner to the original owner for the statutory
23 period of five years. To the extent defendants fail to prove any
24 element of prescription or the evidence shows that defendants have
25 indeed taken non-surplus water in derogation of the rights of

26
27 ¹ The Wood Class Settling Defendants (“Settling Defendants”) are the City of Lancaster, Rosamond
28 Community Services District, Palmdale Water District and Phelan Pinon Hills Community Services
District.

1 overlying landowners, plaintiff's and the Class's property interests
2 have been damaged and/or infringed."

3 (First Amended Complaint, p. 2, lns. 9-16.)

4 Similarly, the first and primary cause of action of the Wood Class First Amended Complaint is
5 one for declaratory relief and alleges in paragraph 28:

6 "Plaintiff and the Class seek a judicial determination that their rights
7 as overlying users are superior to the rights of all non-overlying users
8 and that they have correlative rights vis-à-vis other overlying
9 landowners."

10 (First Amended Complaint, ¶ 28, p. 9, lns. 2-4.)

11 As between the Wood Class and the Settling Defendants, these issues raised by the Wood Class
12 First Amended Complaint have been fully resolved. As to the Wood Class' overlying correlative
13 rights, Section IV.C.2 (at page 9) of the Wood Class Stipulation for Settlement ("Settlement")
14 provides:

15 "The Settling Parties agree between and among themselves, that the
16 Wood Class Members have an Overlying Right to a correlative share
17 of the Native Safe Yield for reasonable and beneficial uses on their
18 overlying land. The Settling Defendants will not take any positions
19 or enter into any agreements that are inconsistent with the Wood
20 Class Members' Overlying Right to produce and use their correlative
21 share of the Basin's Native Safe Yield."

22 And as to prescription, the Settlement provides at Section IV.D.2. (page 11) as follows:

23 "Safe Harbor: The Wood Class Members acknowledge that the
24 Settling Defendants may at trial prove prescriptive rights against all
25 groundwater pumping of the Basin during a prior prescriptive period.
26 If the Settling Defendants do acquire prescriptive rights, those
27 prescriptive rights shall not be exercised to reduce the Wood Class
28 Members' Overlying Rights."

1 As between the Settling Defendants and the Wood Class, the Wood Class First Amended
2 Complaint has been resolved. The Settlement preserves any alleged overlying rights of the Wood
3 Class Members and precludes the Settling Defendants from diminishing any overlying rights of the
4 Wood Class through claims of prescription.

5 The upcoming Phase 6 Trial will focus primarily on claims of prescription against overlying
6 landowners - - claims which have been resolved as between the Wood Class and Settling Defendants
7 through the Settlement. Because the Settling Defendants have resolved all substantive allegations of
8 the Wood Class First Amended Complaint, and because the Phase 6 Trial will address prescription, the
9 Settling Defendants should have no ongoing liability for fees and costs of the court-appointed expert
10 moving forward.

11 **III. TO THE EXTENT ONGOING WORK IS REQUIRED OF THE COURT-APPOINTED**
12 **EXPERT, HIS FEES AND COSTS SHOULD BE PAID BY EITHER (1) THE NON-**
13 **SETTLING DEFENDANTS, OR (2) ALL PARTIES TO THIS COMPREHENSIVE**
14 **ADJUDICATION.**

15 The express and stated purpose of the Wood Class First Amended Complaint is to defend the
16 alleged overlying rights of the Wood Class against claims of prescription. Nowhere in the First
17 Amended Complaint does the Wood Class seek a specific quantification of its water rights,
18 collectively or individually. The Settling Defendants have fully and finally resolved the charging
19 allegations of the Wood Class First Amended Complaint - - preservation of claimed overlying rights of
20 the Wood Class against claims of prescription. To the extent the court-appointed expert is utilized by
21 the Court to provide assistance with the Phase 6 Trial, the Settling Defendants should have no ongoing
22 obligation to fund work arising out of, or related to, settled claims. Such costs should be borne entirely
23 by the Non-Settling Defendants, each of which has made the choice to continue litigating prescription
24 claims against the Wood Class, necessitating the continued work by the court-appointed expert.

25 Conversely, to the extent a comprehensive adjudication and/or quantification of the water
26 rights of the Wood Class is necessitated by other pleadings, and the court-appointed expert is needed
27 to assist the Court in that effort, such costs should be borne by all parties. In this regard, and as
28 District 40 points out in its Opposition:

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1 “Fairness requires that *all parties* who benefit from the expert’s work
2 share a portion of his fees and costs. Unless the Wood Class
3 abandons its water claims, an evidentiary hearing on the Wood Class’
4 groundwater pumping and reasonable and beneficial use of that water
5 is required *as to all parties*.”


6 (Emphasis added; Opposition p. 3, lns. 2-5.)

7 If the purpose of any work of the court-appointed expert is to quantify the rights of the Wood
8 Class as part of a comprehensive adjudication (relief that is not sought in the operative Wood Class
9 First Amended Complaint against the Public Water Suppliers), then as District 40 contends fairness
10 requires that “all parties” must contribute financially towards the fees and costs of the court-appointed
11 expert.

12 **IV. CONCLUSION.**

13 For all the foregoing reasons and authorities, the Settling Defendants respectfully request, in
14 furtherance of Section VIII.D.4 of the Wood Class Settlement, that they be relieved from all existing
15 court orders for payment of court-appointed expert fees and costs from and after the granting of the
16 final approval motion.

17
18 DATED: December 30, 2013 MURPHY & EVERTZ LLP

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20 By: 
21 Douglas J. Evertz, Attorneys for City of Lancaster and
22 Rosamond Community Services District
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1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**
3 Judicial Council Coordination, Proceeding No. 4408

4 Santa Clara Case No. 1-05-CV 049053
5 Assigned to the Honorable Jack Komar
6 Los Angeles County Superior Court, Central, Dept. 1

7 I am a resident of the State of California, over 18 years of age and not a party to this action. I
8 am employed in the County of Orange, State of California. My business address is 650 Town Center
9 Drive, Suite 550, Costa Mesa, California 92626.

10 On December 30, 2013, I served the within document(s):

11 **REPLY OF WOOD CLASS SETTling DEFENDANTS IN SUPPORT OF MOTION TO**
12 **BE RELIEVED OF ALL COURT ORDERS FOR PAYMENT OF COURT-APPOINTED**
13 **EXPERT FEES AND COSTS**

14 by posting the document(s) listed above to the website <http://www.scefilng.org>, a
15 dedicated link to the Antelope Valley Groundwater Cases; Santa Clara Case
16 No. 1-05-CV 049053, Assigned to the Honorable Jack Komar, said document(s) is
17 electronically served/distributed therewith.

18 By transmitting via e-mail the document(s) listed above to the e-mail address(es) and/or
19 fax number(s) set forth below on this date.

20 by placing the document(s) listed above in a sealed Norco Overnight envelope/package for
21 overnight delivery at Costa Mesa, California addressed as set forth below.

22 by causing personal delivery by Nationwide Legal of the document(s) listed above, to the
23 person(s) at the address(es) set forth below.

24 I am readily familiar with Murphy & Evertz, LLP's practice for collecting and processing
25 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
26 on the same day that the correspondence is placed for collection and mailing, it is deposited in the
27 ordinary course of business with the United States Postal Service, in a sealed envelope with postage
28 fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

Executed on December 30, 2013, at Costa Mesa, California.


Stephanie Pattis