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**EXEMPT FROM FILING FEES
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

17
18 **ANTELOPE VALLEY
GROUNDWATER CASES**

19 **Included Actions:**

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

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

25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
28

Judicial Council Coordination No. 4408

CLASS ACTION

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

**PUBLIC WATER SUPPLIERS' OPPOSITION
TO RICHARD WOOD'S MOTION FOR
APPOINTMENT OF EXPERT**

Date: March 5, 2009

Time: 9:00 a.m.

Dept.: 17

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1 **I. INTRODUCTION.**

2 The motion should be denied for each of the following reasons:

- 3 • No authority provides for an order requiring a civil litigant to pay the adverse
- 4 party's expert witness fees pending resolution of the case;
- 5 • Class members' alleged "self-help" – the primary basis for the motion – may not
- 6 be the proper subject of expert witness testimony in this proceeding;
- 7 • No evidence of "self-help" need come before the court until it first determines safe
- 8 yield and overdraft;
- 9 • The Wood Class attorneys may participate in joint efforts on the part of other
- 10 private landowner parties to coordinate their litigation strategy and share expert
- 11 witness information concerning safe yield and overdraft;
- 12 • The court will ultimately decide how all parties – including private landowner
- 13 parties – will present expert witness testimony at trial so as to avoid cumulative
- 14 and unduly time-consuming testimony.

15
16 **II. A CIVIL LITIGANT DOES NOT PAY THE ADVERSE PARTY'S**
17 **EXPERT WITNESS COSTS PENDING RESOLUTION OF THE CASE.**

18 There is no authority for ordering a civil litigant to pay the adverse party's expert witness
19 costs pending resolution of the case. Although the motion relies upon Evidence Code section
20 730, it merely provides that the court may appoint an expert and "may fix the compensation . . .
21 at the amount as seems reasonable to the court." Section 730 does *not* allow the court to impose
22 expert witness costs upon the adverse party, and no case authority exists to require an adverse
23 party to bear such expert witness costs pending case resolution.

24 "[E]xperts appointed under section 730 are necessary only when the court sees the need
25 for an assessment by a disinterested and impartial expert who is not advocating on behalf of a
26 party to the action." (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394 fn. 4, citing *Mercury*
27 *Casualty Co. v. Superior Court* (1986) 179 Cal.App.3d 1027, 1032, 1033.) Moreover, case law
28 interpreting Section 730 holds it does *not* allow the court to appoint an expert for the use of only

1 one party: “Section 730 . . . does not authorize the appointment of experts whose work will be
2 kept confidential. Instead, it contemplates that any expert appointed will be available for either
3 party to call and examine as a witness.” (*People v. Angulo* (2005) 129 Cal.App.4th 303, 313-314
4 *modified, rehearing denied* Cal.App.LEXIS 755 (Cal.App.4th Dist., 2005.)

5 Moving party’s contention that defendant public water supplier agreement to pay class
6 notice mailing costs should also mean they can be ordered to pay expert witness costs, is wrong.
7 Public water suppliers agreed to bear such notice costs only to avoid further delays in the class
8 notice process, and because plaintiff class notice costs can be imposed upon defendants. (Cal.
9 Rules of Ct., Rule 3.766.) Agreeing to pay class notice mailing costs, however, cannot be
10 construed as an implied agreement to pay for the adverse class members’ expert witness costs in
11 their case against the defendant public water suppliers; they have spent considerable sums of
12 money on expert witness analysis of the Adjudication Area, and they do not have funds to pay an
13 adverse party’s expert.

14
15 **III. COURT APPOINTMENT OF AN EXPERT WITNESS FOR**
16 **SELF HELP WOULD BE PREMATURE.**

17 The primary basis for the motion is a purported need for an expert to analyze and present
18 evidence of “self help.” The Court has not yet set or otherwise scheduled a phase of trial
19 concerning self-help. It does not become an issue until the court first determines safe yield and
20 overdraft. Until those determination are made, the parties will not have to analyze self-help
21 issues and evidence.

22
23 **IV. “SELF-HELP” IS NOT NECESSARILY THE PROPER SUBJECT OF EXPERT**
24 **WITNESS TESTIMONY.**

25 The need to analyze self help data does not necessarily establish the need to retain an
26 expert witness. “Self-help” is groundwater production during the prescriptive time period, and
27 would require a showing that a particular landowner pumped groundwater in certain amounts
28 during certain times for reasonable and beneficial use on the landowner’s property. (*City of Los*

1 *Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, fn. 101 citing *City of Pasadena v.*
2 *City of Alhambra* (1949) 33 Cal.2d 901, 931-933.) Self-help is a discovery issue before trial; and
3 a factual issue at trial. To determine when, if ever, a private landowner pumped groundwater is a
4 factual issue not necessarily “beyond common experience that the opinion of an expert would
5 assist the trier of fact. . . .” (Evid. Code § 801(a.)
6

7 **V. WOOD CLASS MEMBERS HAVE THE SAME INTERESTS**
8 **AS OTHER PRIVATE LANDOWNER PARTIES AND THE**
9 **WOOD CLASS ALREADY HAS ACCESS OR SHOULD HAVE**
10 **ACCESS TO OTHER PRIVATE LANDOWNER PARTIES’**
11 **EXPERT WITNESS ANALYSIS.**

12 As to issues of self help, safe yield and overdraft, the Wood Class members are in the
13 same position as other overlying private landowners claiming superior rights as against public
14 water suppliers. Other private landowner parties have retained expert witnesses who have
15 participated in technical committee discussions and/or have otherwise been retained to provide
16 expert witness opinions on these issues at trial. Additionally, Wood Class counsel participates or
17 can participate with other private landowner party attorneys in developing case strategy that
18 includes discovery, hearings, and trial. Their cooperation allows or should allow Wood Class
19 counsel to evaluate expert witnesses analysis by other private landowner parties – much of it
20 already shared in the Technical Committee process and now made publicly available to all parties
21 as ordered by the Court.
22

23 **VI. THE COURT WILL DECIDE HOW MANY PRIVATE LANDOWNER**
24 **PARTIES’ EXPERTS WILL TESTIFY AS TO SAFE YIELD AND**
25 **OVERDRAFT SO AS TO AVOID CUMULATIVE AND UNDUE**
26 **TIME-CONSUMING OPINION TESTIMONY.**

27 The real issue raised at least indirectly by the Wood Class motion is how many private
28 landowner party experts will testify at trial. Well-established California law allows the court to

1 limit the number of expert witnesses who would testify to avoid cumulative evidence. (Evid.
2 Code §§ 352 and 723.) Certainly, not every landowner party will present cumulative expert
3 witness testimony on safe yield and overdraft, and the motion makes no showing that additional
4 expert witness testimony is needed by private landowner parties.

5
6 **VII. CLASS MEMBERS ARE THE PRIMARY BENEFICIARIES OF THEIR**
7 **PLAINTIFFS' CLASS ACTION AGAINST THE PUBLIC WATER SUPPLIERS**
8

9 Moving party appears to argue their plaintiff's class action lawsuit is of primary benefit to
10 public water suppliers. The class mechanism, however, primarily benefits class members as it
11 allows them to prosecute their claims against public water suppliers without having each
12 landowner maintain an individual action. (*E.g., Vasquez v. Superior Court* (1971) 4 Cal.3d 800,
13 807 ["If each (class member) is left to assert his rights alone if and when he can, there will at best
14 be a random and fragmentary enforcement, if there is any at all."]) Furthermore, public water
15 suppliers seek a physical solution to the Adjudication Area's overdraft conditions that solution
16 will benefit all groundwater users including the class members.

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1 **VIII. CONCLUSION.**

2 For all the reasons herein, the motion for appointment of an expert witness should be
3 denied.

4 Dated: February 20, 2009

BEST BEST & KRIEGER LLP

6
7 By 

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PROOF OF SERVICE

I, Kerry V. Keefe, 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, 5 Park Plaza, Suite 1500, Irvine, California 92614. On February 20, 2009, I served the within document(s):

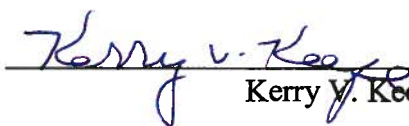
PUBLIC WATER SUPPLIERS' OPPOSITION TO RICHARD WOOD'S MOTION FOR APPOINTMENT OF EXPERT

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on February 20, 2009, at Irvine, California.


Kerry V. Keefe