

1 **BEST BEST & KRIEGER LLP**
ERIC L. GARNER, Bar No. 130665
2 JEFFREY V. DUNN, Bar No. 131926
STEFANIE D. HEDLUND, Bar No. 239787
3 5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614
4 TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
5 Attorneys for Cross-Complainants
6 **ROSAMOND COMMUNITY SERVICES**
DISTRICT and LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

7
8 **OFFICE OF COUNTY COUNSEL**
COUNTY OF LOS ANGELES
ANDREA ORDIN, Bar No. 38235
9 COUNTY COUNSEL
WARREN WELLEN, Bar No. 139152
10 PRINCIPAL DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
11 LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-8407
12 TELECOPIER: (213) 687-7337
Attorneys for Cross-Complainant LOS ANGELES
13 **COUNTY WATERWORKS DISTRICT NO. 40**

14
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

Judicial Council Coordination No. 4408

CLASS ACTION

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

LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40 OPPOSITION TO
REQUEST FOR TRIAL CONTINUANCE

Trial Date: September 27, 2010
Time: 1:00 p.m.
Dept.: 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I INTRODUCTION

With only a few hours to review the ex parte request to continue trial filed today, it is clear that it is mainly brought by a relatively small number of very large private corporations and farming groups with a continued interest in delaying the safe yield trial.¹ They include the parties who, after the Court scheduled the safe yield trial, twice filed preemptory challenges under Code of Civil Procedure section 170.6, and also unsuccessfully sought stays from the Court of Appeal.

It is important to note how little support there is for further delay of an already long-delayed safe yield determination. For example, the trial delay is not supported by the largest governmental entities representing the public in the Antelope Valley: United States, State of California, County of Los Angeles Waterworks District No. 40, City of Los Angeles, City of Palmdale, Little Rock Creek Irrigation District, Rosamond Community Services District or others.

The United States is the largest landowner in the Basin. Edwards Air Force Base provides the economic foundation for the Antelope Valley with technology and aerospace jobs. Los Angeles County Waterworks District No. 40 is the largest public water supplier providing public water service to approximately 250,000 people in over 165,000 homes and businesses. The trial delay is against the public interest in having the safe yield determination as soon as possible after these many years of litigation.

The vast majority of private landowners do not support the safe yield trial delay. More than 2,330 individual landowner parties are *not* included in the trial delay request. Additionally, the largest group of landowners, the Willis Class, consisting of more than 73,000 property owners, does not support the trial delay.

Moreover, the trial continuance parties admit “no party is formally bound by the Accord.” Yet, the Willis Class Settlement Agreement has been *formally approved* the elected governing boards of Los Angeles County Waterworks District No. 40, Palmdale Water District, Quartz Hill

¹ Although the ex parte application is filed by the City of Lancaster, it is not a public water supplier. It pumps little, if any, groundwater. Quartz Hill Water District and Palmdale Water District have felt pressure to settle or continue to pay litigation costs. As for the Wood Class, it continues its settlement schizophrania by claiming to be “98 percent” close to a deal with the Public Water Suppliers.

1 Water District, and Rosamond Community Services District.

2 As to the Wood Class, there has been additional negotiation between the Wood Class and
3 the Los Angeles County Waterworks District No. 40 that has brought the two parties even closer
4 to settlement than the “98 percent” estimate provided to the Court only two weeks ago. Indeed,
5 the two groups have indicated they do *not* need any further mediation assistance but could
6 complete their written settlement agreement without assistance.

7 Already parties that have been involved in the Waldo process have privately contacted
8 Waterworks District No. 40 because the Waldo process and “Accord” is based on a bogus yield
9 number and is essentially a general settlement framework but with “special deals” for certain
10 large landowner parties and groups.

11 **II THE PARTIES DISAGREE, AND HAVE DISAGREED OVER THE SAFE YIELD
12 FOR THE LAST 10 YEARS, AND THERE WILL NOT BE A LEGALLY-
13 DEFENSIBLE SETTLEMENT UNTIL THE COURT DETERMINES THE SAFE
14 YIELD**

15 As previously explained, there are two vastly different settlement proposals.

16 The first is an approved settlement agreement (the “Robie Settlement”) with over 73,000
17 property owners, over 165,000 homes and businesses, and it is consistent with stated objectives of
18 the United States who own more than 460 square miles in the Basin. All public water supplier
19 elected boards have approved the Robie Settlement principles including the Los Angeles County
20 Board of Supervisors, the governing body for Los Angeles County Waterworks District No. 40.
21 In fact, the public water supplier governing boards have each approved the Willis Class
22 Settlement, and it will be presented to the Court for preliminary settlement approval in August.

23 Stated simply, there is a settlement now that encompasses the vast majority of the
24 approximately 75,000 private landowners, over 165,000 homes and businesses who depend upon
25 a long-term viable water supply, and it is based upon the best available scientific evidence and is
26 thus, acceptable to the federal government operating Edwards Air Force Base, the critical
27 economic foundation in the Antelope Valley. Moreover, the Robie Settlement has been approved
28 by the elected governing boards of the other public water suppliers appears, and appears
acceptable to other landowner parties who participated in the Waldo process but who did not file

1 the trial delay application. Finally, other participants in the Waldo process have expressed their
2 interest in the Robie Settlement principles and their concern over the Waldo Accord; they are
3 negotiation with the public water suppliers.

4 The second is the so-called “Waldo Accord” *which has not been approved by any party*.
5 It is presented by the City of Lancaster together with a relatively few large agricultural property
6 owners and only a few local governmental entities who may or may not actually ultimately
7 support such a proposal. The two settlements, however, could not be more different on the
8 Basin’s yield, the most critical aspect of the parties rights to groundwater.

9 The Robie Settlement is based on years of hydrologic study and analysis by leading
10 California groundwater experts. The Waldo “Accord” is not. Instead, the participants merely
11 agreed upon a yield number that they admit is not the safe yield of the Basin but a number to
12 prevent large landowner parties from having to reduce their groundwater pumping to the Basin’s
13 safe yield, and instead, possibly more than 10 years from now, consider potential solutions to the
14 existing overdraft.²

15 As explained below, the Waldo Accord is not and cannot be acceptable to the County of
16 Los Angeles Waterworks District No. 40 who has a legal duty to insure an adequate water supply
17 for the public. For this reason, the Robie Settlement acknowledges the overdraft conditions,
18 allocates water to both public and private parties, and protects all parties from continued depletion
19 of the groundwater supply.

20 Over the last 10 years, there have been repeated attempts to achieve an overall settlement.
21 None have been successful. There is no question that the largest settlement obstacle is the
22 absence of a court-determined sustainable yield for the Basin.

23 Without the determination of the Basin’s yield, all parties do not know how much
24 groundwater is available to safely pump from the Basin, nor can they know how much additional
25

26 ² Perhaps, the Court could enquire of the “moving principals” how the Waldo Accord can
27 compromise the safe yield in the face of overwhelming scientific evidence and, instead merely
28 agree upon a yield number which was later sent to two selected persons only for the two persons
to widely disagree themselves on the yield number.

1 imported water is needed from the State Water Project. Of greater concern and significance to the
2 public, there will be no court protections against continual overdraft pumping because, until the
3 Court first determines how much groundwater can be pumped on a sustainable basis, the Court
4 cannot protect the public by limiting overall groundwater pumping or requiring the replenishment
5 of the Basin with imported water.

6 The Court has made clear on repeated occasions that there should be no further delay.
7 Continued delay will not lead to a resolution of the Basin’s sustainable yield. Currently,
8 settlement discussions continue between Los Angeles County Waterworks District No. 40, public
9 water suppliers and landowner parties and will do so without any trial continuance.

10
11 **III THERE IS NO GOOD CAUSE TO CONTINUE THE ALREADY DELAYED SAFE
12 YIELD AND OVERDRAFT DETERMINATIONS.**

13 “To ensure the prompt disposition of civil cases, the dates assigned for trial are firm. All
14 parties and their counsel must regard the date set for trial as certain.” (C.R.C. 3.1332(c)
15 [“continuances of trial are disfavored.”] Moreover, an affirmative showing of good cause in a
16 noticed motion is required for a trial continuance. (C.R.C. 3.1332.) Out of thousands of parties,
17 only a relatively few ask for a trial continuance but they do not establish good cause for a
18 continuance. The Waldo Accord has no bearing on the parties ability to go trial, and the Court
19 has repeatedly and unequivocally indicated that the trial will take place in September, 2010.
20 Indeed, the Court indicated that a potential settlement with the Waldo process would not impact
21 the trial date:

22
23 “The Court: Okay. I’m assuming that these discussions and these
24 potential settlement if they come to pass will then flow right into
25 the necessity of adjudication?”

26 Mr. Lemieux: Your Honor, this is Keith Lemieux. To my
27 knowledge, the County is not participating. I don’t believe the
28 federal government is participating. So I don’t think anything with
this Waldo procedure is going to have any bearing on the trial date.

The Court: Well, that’s what I meant. We would then proceed with
the trial because that’s going to be an important finding of fact that
needs to be made by the court.”

1 (June 14, 2010 CMC at pg. 14:10-21.)
2

3 At an earlier Case Management Conference in Los Angeles, the Court made clear the
4 parties are to adhere to the court's scheduled trial date:

5 "Mr. Lemieux: Good morning, your Honor. My objection is not to
6 the two-week delay, but to the next one. I'm fairly certain that this
7 is a story that is going to be played out over and over again. And
8 while we all expect some delay in these proceedings, we should
9 also anticipate this is an endless cycle, and I will object to that.

10 "The Court: I think that's an anticipatory objection. We had our
11 share of delays in this case. You are entitled, more than entitled to.
12 I'm going to grant this specific request, but bearing in mind that
13 cases that don't have set, firm dates rarely get resolved. I'm going
14 to admonish counsel to do what you need to do to get this matter in
15 position to either settle or to be tried. I do not want to reset that
16 trial date."

17 (Transcript of May 6, 2010 Hearing at pg. 5:3-17.)

18 **IV PHASE III TRIAL SHOULD PROCEED AS SCHEDULED SO THIS COURT
19 CAN DETERMINE THE BASIN'S SAFE YIELD**

20 This Court is only sixty days from the Phase III trial. It is the most significant point in
21 this 11-year groundwater dispute because, at this time, the Court will provide an answer to the
22 long-contested issue of the safe yield of the Antelope Valley Groundwater Basin. As an earlier
23 court has noted, the safe yield is the "*sina qua non*" of a groundwater adjudication. (See Santa
24 Maria Groundwater Litigation, Case No. CV 770214, Partial Statement of Decision Re Trial III,
25 at 9:6-11.) Thus, courts play a pivotal role in determining safe yield.³

26 Until the Court determines the Basin's safe yield, it is almost impossible for there to be a
27 settlement agreement with all parties or even a legally-defensible settlement agreement. In the

28 ³ Unlike surface water rights, which since 1914 have been regulated by the State pursuant to a
permitting process as set forth in Water Code section 1200 *et seq.*, the Legislature did not
authorize the State to manage groundwater resources. Instead, groundwater is regulated by a set
of common law principles that establish and allocate rights among groundwater users. As a
result, a large body of law governing groundwater usage has evolved through a series of
California court decisions that date as far back as the early 1900s. (See, e.g., *Katz v. Walkinshaw*
(1903) 141 Cal. 116 [establishing the correlative rights doctrine]; *Peabody v. City of Vallejo*
(1935) 2 Cal.2d 351 [limiting riparian rights to reasonable and beneficial uses]; *Pasadena v.*
Alhambra (1949) 33 Cal.2d 908 [first groundwater basin adjudication in California].)

1 absence of a safe yield finding, the parties cannot know how much water can be safely extracted
2 from the Basin or how much water is needed to replenish the Basin. Proceeding with the Phase
3 III trial will result in a safe yield determination, which will allow for a legally-defensible
4 settlement agreement and certainty for the tens of thousands of parties waiting for court
5 determination.

6 **V A BASIN'S SAFE YIELD MUST BE BASED UPON BEST AVAILABLE**
7 **SCIENTIFIC EVIDENCE AND NOT A MERE COMPROMISE BY CERTAIN**
8 **PARTIES OR THE PARTIES FACE CONTINUED OVERDRAFT AND**
9 **POTENTIAL LEGAL CHALLENGES**

10 As set forth in Waterworks District No. 40's Case Management Statement of July 13,
11 2010, District No. 40 has both serious objections and reservations regarding the nature of the
12 agreement resulting from the settlement process overseen by Mr. James C. Waldo (i.e., the
13 "Waldo Accord").

14 In addition to these substantive concerns it is important to note that while Mr. Waldo's
15 resume is distinguished, the fact remains that he is a Washington attorney and not a California
16 water law attorney. As this court well knows, California water law is a world unto itself and the
17 California Supreme Court has declared that water resource management issues are the most
18 complex issues to come before the California courts. (*Environmental Defense Fund, Inc. v. E.*
19 *Bay Mun. Util. Dist.* (1980) 26 Cal. 3d 183, 194 ["The scope and technical complexity of issues
20 concerning water resource management are unequalled by virtually any other type of activity
21 presented to the courts."])

22 Concerns over having an out-of-state attorney mediate certain parties settlement
23 discussions are heightened here because two prior water settlements facilitated in California by
24 Mr. Waldo have been challenged in court. In the first settlement, commonly known as the
25 Monterey Agreement, the Department of Water Resources and contracting water agencies agreed
26 to a statement of principles, including the permanent sale of water among agencies. This
27 particular principle has been heavily debated and has been the subject of a considerable amount of
28 litigation due to its creation of "paper water" entitlements in lieu of actual water availability. (See

1 *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892,
2 908 [“The SWP, however, has never been completed and the state cannot deliver 4.23 maf of
3 water annually. The entitlements represent nothing more than hopes, expectations, water futures
4 or, as the parties refer to them, "paper water." Actual, reliable water supply from the SWP is more
5 in the vicinity of 2 to 2.5 maf of water annually. Consequently, there is a huge gap between what
6 is promised and what can be delivered.”]; *Friends of the Santa Clara River v. Castaic Lake Water*
7 *Agency* (2002) 95 Cal.App.4th 1373; *Santa Clarita Organization for Planning the Environment v.*
8 *County of Los Angeles* (2007) 157 Cal.App.4th 149.)

9 In the Monterey Agreement the parties renegotiated contract provisions for State Water
10 Project water deliveries. They negotiated, however, based on their full contractual entitlements.
11 The problem was that many of the State Water Project contractors had never received their full
12 contractual entitlements and had no reasonable expectation of doing so in the future. In other
13 words, the parties negotiated agreements that may not have been based on water realities.

14 Unfortunately, the Waldo Accord may be condemned by the same flawed analysis and
15 process. Instead of acknowledging best available scientific evidence of the Basin’s safe yield,
16 Waldo Accord proponents want to merely compromise upon an acceptable initial yield far higher
17 than the best technical data supports and would admittedly keep the Basin in overdraft for as long
18 as another 10 years. Their “paper” yield does not protect the long-term health of the Basin or the
19 public that depends upon a groundwater supply with a court-protected safe yield determination.

20 In the second settlement, Mr. Waldo helped mediate certain discussions among various
21 stakeholders for possible solutions to the recharge and management of groundwater resources in
22 the Los Angeles area’s Central and West Coast Basins. In May of this year, however, the Los
23 Angeles County Superior Court invalidated on procedural grounds at least some or all of the
24 settlement. (*Central & West Basin Water v. Adams et al.*, Los Angeles County Superior Court
25 Case No. C506806.)

26 Additionally, it is important to note three facts about the Waldo Accord process.

27 First, there were various parties participating from time-to-time in the Waldo process but
28 they do *not* all agree with the Waldo Accord. Indeed, certain participating parties disagree with

1 the Waldo Accord and, in particular its lack of analysis. It is not surprising that, as “moving
2 principals” admit, no party has adopted the Waldo Accord.

3 Secondly, despite any representations to the contrary, Waterworks District No. 40 and
4 others had repeated communications with Mr. Waldo and/or members of his law firm, as well as
5 with other participants in the Waldo process, over the Basin’s safe yield, overdraft and settlement.
6 It seemed clear to Waterworks District No. 40 and perhaps others, neither Mr. Waldo nor large
7 landowner parties sponsoring him would agree to a settlement or even a settlement negotiation
8 process that was based on available scientific evidence but instead on how much groundwater
9 was needed to reach an agreement.

10 Waterworks District No. 40 repeatedly explained that it could not then, and it cannot now,
11 agree to a yield number simply to make an agreement. Moreover, Waterworks District No. 40
12 cannot enter into an agreement that would intentionally overdraft the Basin as does the Waldo
13 Accord.

14
15 **VI COURTS HAVE A DUTY TO PROTECT THE GROUNDWATER RESOURCE**
16 **AND SHOULD NOT DELAY A SAFE YIELD DETERMINATION**

17 This court needs to resolve the disagreement among the parties regarding the safe yield of
18 the Basin. The Waldo Accord arbitrarily sets pumping at approximately 150,000 acre-feet which
19 is more 40,000 acre feet higher than the best scientific evidence on the Basin’s yield.⁴

20 Safe yield is not and cannot be a number that some parties, or even all the parties, want it
21 to be. To the contrary, this Court has a constitutional duty to protect the Basin pursuant to Article
22 X, section 2, which requires that a court, and not the parties, to determine the issue of safe yield.

23 The Reasonable Use Doctrine of Article X, section 2 of the California Constitution, is the
24 fundamental mandate of California Water Law (*United States v. State Water Resources Control*
25 *Board* (1986) 182 Cal.App.3d 82, 105) and is “applied in settlement of all water controversies.”
26 (*San Bernardino Valley Muni. Water Dist. v. Gage Canal Co* (1964) 226 Cal.App.2d 206, 215;

27 ⁴ It appears that the Waldo Accord reached their compromise yield number by simply “splitting the difference”
28 between the upper and lower ranges of yield numbers by the two disagreeing experts hired to look at the compromise
number.

1 accord *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443.) Article X,
2 Section 2, in pertinent part, provides:

3 It is hereby declared that because of the conditions prevailing in this
4 State the general welfare requires that the water resources of the
5 State be put to beneficial use to the fullest extent of which they are
6 capable, and that the waste or unreasonable use or unreasonable
7 method of use of water be prevented, and that the conservation of
8 such waters is to be exercised with a view to the reasonable and
9 beneficial use thereof in the interest of the people and for the public
10 welfare. (Cal. Const. Art. X, § 2.)

11 As with all constitutional provisions, all branches of the government, including the courts,
12 are required to comply with it. (See Cal. Const. Art. I, § 26; *Mosk v. Superior Court* (1979) 25
13 Cal.3d 474, 493, fn. 17.) Thus, there is a constitutional duty incumbent upon every court
14 pursuant to Article X, section 2 of the California Constitution to exercise their equitable powers
15 in resolving water rights disputes to ensure that water resources are utilized to the fullest extent to
16 which they are capable to protect the public interest. (*Los Angeles v. San Fernando* (1975) 14
17 Cal. 3d 199, 287 [In formulating its findings, conclusions and judgment, the trial court was
18 properly mindful of its constitutional duty to protect the parties' rights in a manner that would
19 minimize waste and maximize beneficial use of the water in controversy.”].) Accordingly, any
20 settlement approved by the Court must be based on the best scientific evidence for a safe yield
21 that meets the constitutional mandate to conserve the Basin's waters for reasonable and beneficial
22 use.

23 **VII THE WALDO ACCORD HAS A GENERAL SETTLEMENT FRAMEWORK BUT**
24 **THERE IS NO LEGALLY-DEFENSIBLE AGREEMENT ON SAFE YIELD**

25 The “moving principals” were highly anxious to bring the Waldo Accord to the Court’s
26 attention because “moving principals” believe that they can convince the Court that the Waldo
27 Accord is a “monumental” accomplishment. It is not. Instead, the Waldo Accord is noteworthy
28 for what it does not accomplish; there is no recognition of the best available scientific evidence to
stop the Basin’s chronic overdraft.

The Court should not be misled into believing the Waldo Accord will be acceptable to the

1 Waterworks District No. 40 or to many other parties who must have court-approved protection
2 from the ongoing overdraft. If the Court and the parties are truly desirous to reach an agreement,
3 the Court should decide the long-contested issue of safe yield.
4

5 **VIII CONCLUSION**

6 Parties can continue to pursue mediation either with Justice Robie (or Mr. Waldo) without
7 any continuance of the safe yield and overdraft determinations. No good cause to delay the Phase
8 3 trial proceeding has been established.

9 Certain members of the “moving principals” have already designated their expert
10 witnesses, and have noticed the expert witness deposition for every expert witness designated by
11 the United States and the Public Water Suppliers for the Court’s determination of safe yield and
12 overdraft in late September. As the previous request for a continuance acknowledged the Basin is
13 an overdraft, there is abundant good cause to make the safe yield and overdraft determinations as
14 soon as possible and as the Court has so indicated on repeated occasions.
15

16
17
18 Dated: July 26, 2010

BEST BEST & KRIEGER LLP

19
20 By – ORIGINAL SIGNED

ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40
21
22
23
24
25
26
27
28