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11 Attorneys for Defendant CITY OF LOS ANGELES

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15 Coordination Proceeding

Judicial Council Coordination Proceeding  
No. 4408

16 ANTELOPE VALLEY  
17 GROUNDWATER CASES

Santa Clara Case No. 105 CV 049053  
Assigned to Honorable Jack Komar

18 Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co.

**RESPONSE TO MOTION FOR  
APPOINTMENT OF BILL B. DENDY AS  
MANDATORY SETTLEMENT  
CONFERENCE REFEREE;  
DECLARATION OF JANET K.  
GOLDSMITH**

19 Los Angeles County Waterworks District  
20 No. 40 v. Diamond Farming Co.

21 Wm. Bolthouse Farms, Inc. v. City of  
Lancaster

Hearing:  
Date: AUGUST 20, 2007  
Time: 9:00 a.m.  
Dept.: 1

22 Diamond Farming Co. v. City of  
23 Lancaster

24 Diamond Farming Co. v. Palmdale Water  
District

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **INTRODUCTION**

27 The City of Los Angeles Department of Water and Power ("City") opposes the motion by  
28

1 the County of Los Angeles (“County”) for appointment of a referee to conduct mandatory  
2 settlement conferences at this time. Although the City believes William Dendy to be qualified  
3 and experienced concerning groundwater issues, he may have a conflict of interest that makes  
4 him unsuitable as a settlement referee in this case. Additionally, requiring mandatory settlement  
5 conferences at this time would be premature, unduly burdensome to the parties and possibly  
6 counter-productive. Appointment of a settlement referee at this stage of the litigation is not  
7 warranted by the facts before the Court.

8 ARGUMENT

9 The Antelope Valley Groundwater Cases are a complex suite of actions and cross-action  
10 focusing on the delineation of the groundwater rights of hundreds, if not thousands, of parties.  
11 Managing this litigation may, at some point, require the Court to use its judicial power to compel  
12 the parties to discuss, negotiate and hopefully achieve a settlement that protects and preserves the  
13 precious water resources of the Antelope Valley. Mandatory settlement proceedings are likely to  
14 be necessary at some point. However, this is not that point in time.

15 1. The Court May Not Compel Mediation.

16 The statutes and case law are clear that the Court has no authority to compel the parties to  
17 mediate their dispute. (Cal. Rules of Court, Rule 3.920; *Jeld-Wen, Inc. v. Superior Court* (2007)  
18 146 Cal.App.4<sup>th</sup> 536; 543.) And it is further clear parties’ participation in mediation is voluntary;  
19 it cannot be ordered by the Court. (*Id.*) Accordingly, the County’s motion must be evaluated as a  
20 request that the Court order mandatory settlement conferences, as expressly requested. (County  
21 Memorandum of Points and Authorities in Support of Motion for Appointment etc., at 2:6.)  
22 However, mandatory settlement conferences impose significant burdens which the parties are not  
23 currently in a position to meet.

24 2. Imposing Mandatory Settlement Conference Requirements At This Time Would  
25 Be Premature and Unduly Burdensome.

26 California Rules of Court governing mandatory settlement conferences require that each  
27 party submit a statement that sets forth in detail all facts and law pertinent to the issues and  
28 provide a good faith settlement demand and good faith settlement offer. (Cal. Rules of Court,  
869113.1 1351.7

1 Rule 3.1380.) Persons with “full authority to settle the case” must personally attend the  
2 conference. (*Id.*)

3 At this time, the facts that would inform any good faith settlement offer are still under  
4 investigation: First, the parties have cooperatively undertaken, through the Technical Committee,  
5 a joint report on the Antelope Valley Groundwater Basin (“Basin”) that will inform settlement  
6 discussions as well as provide evidence to the Court, should a trial be necessary. Among the  
7 topics being investigated are (1) annual recharge to the Basin, (2) annual pumping from the Basin,  
8 (3) historic and projected water demands and (4) geologic structures that affect the movement of  
9 groundwater. The draft of this report is not yet complete, and counsel will not receive a copy  
10 until September at the earliest. The parties will need to discuss the contents of the report with  
11 their attorneys and experts before they can arrive at any settlement proposal that could be  
12 considered “good faith.”

13 Second, the parties have not yet engaged in any discovery on issues that could lead to a  
14 negotiated resolution of important issues in the litigation. Many parties will be unable to  
15 formulate a meaningful settlement proposal in the absence of information concerning, for  
16 example, history of property use by the parties to the action or their predecessors, or awareness of  
17 groundwater characteristics. Additionally, significant preparatory work will need to be done  
18 before any settlement proposal can be articulated that includes financing or construction of  
19 facilities to augment the groundwater resources of the Basin.

20 Without this foundational work, requiring parties to personally appear at mandatory  
21 settlement conferences would be fruitless as well as burdensome and costly.

22 3. County Has Not Shown That Mandatory Settlement Conferences Are Necessary  
23 At This Time.

24 Before imposing the costs and burdens of mandatory settlement conferences, the Court  
25 should assure itself that the procedure is necessary. In this case, at this time, it is not.

26 Counsel for the parties have been engaged in periodic settlement discussions for some  
27 time. Early this year, counsel agreed generally that a facilitator or mediator would assist in  
28 moving the process forward and further agreed to retention of William Dendy in that role. Mr.

1 Dendy has met with principals of some of the parties (without counsel) in Lancaster on May 15,  
2 2007. He is currently scheduled to meet with the Technical Committee on August 17, 2007. Mr.  
3 Dendy has not yet provided counsel or the parties with any negotiation blueprint and timetable for  
4 addressing any of the specific issues in the case. Neither has he informed counsel that he believes  
5 mediation will be unsuccessful or expressed any dissatisfaction with the participation in the  
6 mediation process. (Declaration of Janet K. Goldsmith in Support of Response to Motion.) In  
7 fact, according to the Declaration of Jeffrey W. Dunn, Mr. Dendy and the principals are in the  
8 process of arranging further meetings.

9 The County has not stated that financial participation in Mr. Dendy's fees have been an  
10 obstacle to his continued services as mediator. In fact, County offers to pay the fees and seek  
11 participation only on a voluntary basis. County has not stated that other parties have refused to  
12 participate financially. In fact, the County has not offered any factual basis for requesting that  
13 mandatory settlement be required at this time.

14 4. Conflict Of Interest Issues May Make Mr. Dendy An Inappropriate Choice For  
15 Settlement Referee.

16 Recent developments may make Mr. Dendy an inappropriate choice for settlement referee  
17 in any event. For a settlement referee to be effective, he or she must be able to maintain the  
18 confidentiality of the parties' information and positions, while working to bring the parties to  
19 agreement. Among the City of Los Angeles's interests in this litigation is the preservation of its  
20 right and ability to conduct groundwater storage in the Basin which, under appropriate conditions  
21 should protect the Basin from further lowering of the Basin's groundwater levels. In achieving  
22 settlement, the City of Los Angeles will need to share with any settlement referee its interests,  
23 concerns and internal policies. This cannot be done if confidentiality cannot be assured.

24 Mr. Dendy has been retained by the cities of Glendale and Burbank to provide them  
25 consultation in disputes between those cities and the City of Los Angeles. (Declaration of Janet  
26 K. Goldsmith.) The issues in dispute concern the City of Los Angeles's groundwater and  
27 groundwater storage in the San Fernando groundwater basin. Mr. Dendy's role as settlement  
28 referee in the Antelope Valley Groundwater Cases would make it difficult for the City of Los

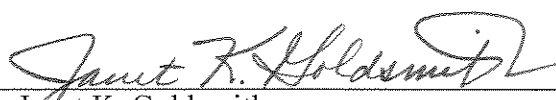
1 Angeles to fully engage in settlement discussions if to do so would provide its adversaries with  
2 information that could be used against it in another litigation proceeding. Accordingly, Mr.  
3 Dendy is not an appropriate choice for settlement referee at this time. CONCLUSION

4 The City of Los Angeles Department of Water and Power urges that the structured  
5 mediation that has been agreed to by counsel be given a chance to succeed before the Court  
6 imposes the burdens and costs of mandatory settlement conferences. The period of time allotted  
7 to the mediation effort should last at least a reasonable period following the release of the  
8 Technical Committee's report. Finally, before appointing a mandatory settlement referee, the  
9 Court should seek the opinion of the mediator as to the prospects for settlement under the  
10 mediation format, and assure itself that the impartiality and confidentiality of the parties' input  
11 into the settlement process will be maintained.. For the foregoing reasons, the City urges the  
12 Court to deny the County's current motion.

13 Dated: August 2, 2007

14  
15 ROCKARD J. DELGADILLO, City Attorney  
16 Richard M. Brown, Senior Assistant City Attorney for  
Water and Power

17 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
18 A Professional Corporation

19 By   
20 Janet K. Goldsmith  
21 Attorneys for Defendant CITY OF LOS ANGELES  
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1 & Parent, which is also counsel of record in the Antelope Valley Groundwater Cases.

2 I declare under penalty of perjury that the above is true and correct. Executed this  
3 2 day of August, 2007, in Sacramento, California

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6 JANET K. GOLDSMITH

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1 PROOF OF SERVICE

2 I, Lorraine Lippolis, declare:

3 I am a resident of the State of California and over the age of eighteen years, and  
4 not a party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento,  
CA 95814-4416. On July 2, 2007, I served the within documents:

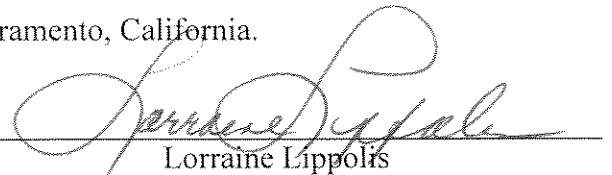
5 **Response to Motion for Appointment of Settlement Referee**  
6 **Declaration of Janet K. Goldsmith**

- 7  by transmitting via facsimile from (916) 321-4555 the above listed document(s)  
8 without error to the fax number(s) set forth below on this date before 5:00 p.m. A  
9 copy of the transmittal/confirmation sheet is attached.
- 10  By e-filing.
- 11  by causing personal delivery by messenger of the document(s) listed above to the  
12 person(s) at the address(es) set forth below.
- 13  by placing the document(s) listed above in a sealed Federal Express envelope and  
14 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal  
15 Express agent for delivery
- 16  by personally delivering the document(s) listed above to the person(s) at the  
17 address(es) set forth below.

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

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

25 Executed on August 2, 2007, at Sacramento, California.

26   
27 Lorraine Lippolis