

# **EXHIBIT M**

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

16 **ANTELOPE VALLEY GROUNDWATER**  
17 **CASES**

18 **Included Actions:**  
Los Angeles County Waterworks District No.  
19 40 v. Diamond Farming Co., Superior Court of  
California, County of Los Angeles, Case No.  
20 BC 325201;

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

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

26  
27 **RICHARD WOOD, on behalf of himself and**  
all other similarly situated v. A.V. Materials,  
Inc., et al., Superior Court of California,  
28 County of Los Angeles, Case No. BC509546.

**EXEMPT FROM FILING FEES**  
**UNDER GOVERNMENT CODE**  
**SECTION 6103**

Judicial Council Coordination Proceeding  
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'S**  
**OPPOSITION TO MOTION OF WOOD**  
**CLASS SETTling DEFENDANTS TO**  
**BE RELIEVED OF ALL COURT**  
**ORDERS FOR PAYMENT OF COURT-**  
**APPOINTED EXPERT FEES AND**  
**COSTS**

*[Filed concurrently with Declaration of  
Jeffrey V. Dunn]*

1 Los Angeles County Waterworks District No. 40 ("District No. 40") opposes Defendants  
2 Rosamond Community Services District, City of Lancaster, Palmdale Water District and Phelan  
3 Hills Community Services District's ("collectively, "Settling Defendants") Motion to Be Relieved  
4 of All Court Orders for Payment of Court-Appointed Expert Fees and Costs ("Motion") because  
5 the Court appointed the Wood Class's expert for the purpose of determining Wood Class's water  
6 rights, the Partial Settlement entered into between the Wood Class and the Settling Defendants  
7 does not determine the Wood Class's water rights, and the court-appointed expert still needs to  
8 continue his work regardless of the Partial Settlement.

9 I. **THE COURT APPOINTED THE WOOD CLASS'S EXPERT FOR THE**  
10 **PURPOSE OF DETERMINING WOOD CLASS'S WATER RIGHTS**

11 In its Motion for an Order Authorizing the Court-Appointed Expert Witness Work ("Work  
12 Authorization Motion"), the Wood Class argued that the expert's work purpose is to estimate  
13 groundwater pumping for the self-help defense and reasonable and beneficial use of such water.  
14 (Declaration of Jeffrey V. Dunn ("Dunn Decl."), Ex. C at pp. 4-5.) The Wood Class  
15 acknowledged in the Work Authorization Motion that even if the Wood Class settled with all of  
16 the Public Water Suppliers, the expert still must continue his work and provide testimony or  
17 report for "an evidentiary prove-up hearing" of water rights. (Dunn Decl., Ex. C at p. 6.) With a  
18 second Wood Class action lawsuit against private and public landowner parties, the expert  
19 witness work will be used in the Wood Class determination of water rights as against all parties.

20 On December 11, 2012, after hearing arguments regarding the Work Authorization  
21 Motion, the Court authorized its appointed expert to estimate groundwater use by the Wood Class  
22 members. (Dunn Decl., Ex. B at p. 1 & Ex. C at Ex. 5.) The Court also ordered only ten public  
23 water suppliers to pay the court-appointed expert his fees and costs in equal amounts. (Dunn  
24 Decl., Ex. B at pp. 1-2.) This order was subsequently amended on September 6, 2013 by  
25 stipulation with District No. 40 having to pay most of the expert's fees and costs. (Dunn Decl.,  
26 Ex. D.) The September 6, 2013 stipulation and amended order does not alter the scope of the  
27 expert's work.  
28

1 **II. PARTIAL SETTLEMENT DOES NOT DETERMINE THE WOOD CLASS'**  
2 **WATER RIGHTS AND DOES NOT ALTER THE REQUIREMENTS OF AN**  
3 **"EVIDENTIARY PROVE-UP", WHICH REQUIRES TESTIMONY OR REPORT**  
4 **OF THE COURT-APPOINTED EXPERT**

5 The Partial Settlement does not provide the Wood Class with any water rights.  
6 (Declaration of Michael McLachlan in Support of Final Approval of Partial Settlement  
7 ("McLachlan Decl."), Ex. 2 at p. 2 ["Does this settlement give me a water right? No."]; see Dunn  
8 Decl., Ex. A at 52:12-16 [Class counsel represented at the October 25, 2013 hearing that the class  
9 is not asking the Court to approve an allocation number as being reasonable]; Motion for Final  
10 Approval of Partial Settlement at p. 5 [Partial Settlement "does not limit the Court's ability to rule  
11 on the Class' ultimate water rights, the Settling Defendants' water rights. . . ."])

12 Water rights cannot be determined without evidence as to their reasonable and beneficial  
13 use, which the Wood Class has not yet done in these coordinated proceedings. (See *Tulare*  
14 *Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 524-525; Cal. Const.,  
15 art. X, § 2.) **It is not possible to determine water rights for some pumpers and not others because**  
16 **the reasonableness determination depends upon all other parties' groundwater uses. Stated**  
17 **simply, the Wood Class reasonable and beneficial use of groundwater cannot be resolved without**  
18 **the Court considering the reasonableness of all groundwater uses. Consequently, the testimony or**  
19 **report of the court-appointed expert is required, not just to establish the Wood Class's**  
20 **groundwater amounts and their reasonable and beneficial use, but to determine the reasonableness**  
21 **of all water uses, including those of the Settling Defendants.**

22 **III. FAIRNESS REQUIRES THE SETTLING DEFENDANTS TO CONTINUE TO**  
23 **PAY THEIR ALREADY REDUCED SHARE OF THE EXPERT'S FEES AND**  
24 **COSTS**

25 The Settling Defendants claim that "it is neither fair nor equitable to force the Settling  
26 Defendants to continue to incur fees and costs when they have elected to settle and resolve their  
27 claims." (Motion at p. 2.) However, the Settling Defendants do not clarify how the Partial  
28 Settlement, which does not establish water rights or reasonable beneficial use, alters the scope of  
the expert's work or reduces his fees and costs. If the Partial Settlement has no impact on  
expert's work, the Partial Settlement cannot be used to justify Settling Defendants' unreasonable



1 request to be relieved of their obligations to pay the expert's fees and costs.

2 Fairness requires that all parties who benefit from the expert's work share a portion of his  
3 fees and costs. Unless the Wood Class abandons its water claims, an evidentiary hearing on the  
4 Wood Class's groundwater pumping and reasonable and beneficial use of that water is required as  
5 to all parties. As water rights are correlative, the Court cannot adjudicate groundwater rights of  
6 any of the water suppliers without determining the Wood Class water rights as against all parties.  
7 (*Orange County Water Dist. v. Colton* (1964) 226 Cal.App.2d 642, 647 ["Since, under the law, all  
8 overlying rights are correlative, in order to make a complete determination every parcel from  
9 which the right was purported to have been granted would have to be analyzed to determine its  
10 beneficial requirement of water in comparison with all other overlying parcels."].) As the court-  
11 appointed expert's testimony or report is necessary to determine the Settling Defendants' water  
12 rights, fairness requires that they share a portion of the expert's fees and costs.

13 **IV. THE PARTIAL SETTLEMENT MAY NOT RESOLVE ALL DISPUTES**  
14 **BETWEEN THE SETTLING PARTIES**

15 Contrary to the Settling Defendants' contention, their decision to settle with the Wood  
16 Class may not "fully and finally resolve their claims against one another." (Motion at p. 2.) At  
17 the crux of the Partial Settlement is the Settling Defendants' agreement that they will not "contest  
18 that each Wood Class Member may pump up to 3 acre-feet per year assessment free, subject to  
19 Court approval, and that such use is subject to a rebuttable presumption that it is domestic until  
20 established otherwise by competent evidence." (McLachlan Decl., Ex. 1 at p. 9.) In other words,  
21 Settling Defendants will not challenge evidence introduced by the Wood Class that each class  
22 member has pumped up to 3 acre-feet per year of water. As the court-appointed expert has not  
23 completed his analysis, it is unknown at this time whether the expert's findings will suggest a  
24 higher groundwater pumping by the Wood Class members. Until the expert completes his  
25 analysis, it is unclear if all disputes between the settling parties are truly resolved. Consequently,  
26 a determination now as to whether the Settling Defendants should be relieved of their duty to  
27 compensate the expert for his fees and costs is premature.

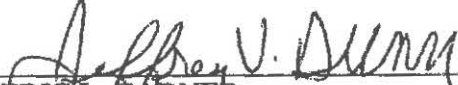
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V. CONCLUSION

For the reasons stated above, District No. 40 respectfully requests the Court to deny the Motion.

Dated: December 23, 2013

BEST BEST & KRIEGER LLP

By   
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