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7 Attorneys for Tejon Ranchcorp

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 9 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

11	Coordination Proceeding Special Title (Rule 1550(b))	)	Judicial Council Coordination Proceeding No. 4408
12	<b>ANTELOPE VALLEY GROUNDWATER</b>	)	Lead Case No. BC 325 201
13	<b>CASES</b>	)	_____
14	Included Actions:	)	Santa Clara Case No. 1-05-CV-049053
15	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Los Angeles, Case No. BC 325 201;	)	Assigned to Hon. Jack Komar
16		)	<b>OPPOSITION OF TEJON</b>
17	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co., Superior Court of California, County of Kern, Case No. S-1500-CV-254-348;	)	<b>RANCHCORP TO MOTION FOR</b>
18		)	<b>PRELIMINARY APPROVAL OF</b>
19	Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case No. RIC 353 840, RIC 344 436, RIC 344 668	)	Date: May 24, 2011 Time: 9:00 a.m. Dept: 316 Judge: Hon. Jack Komar
20		)	
21	Rebecca Lee Willis v. Los Angeles County Waterworks District No. 40, Superior Court of California, County of Los Angeles, Case No. BC 364 553	)	
22		)	
23	Richard A. Wood v. Los Angeles County Waterworks District No. 40, Superior Court of California, County of Los Angeles, Case No. BC 391869	)	
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1 Tejon Ranchcorp (Tejon) hereby objects to the Court's approval of the Wood Class  
2 Stipulation of Settlement (Settlement Agreement) on the following grounds:

3 **A. The Settlement Agreement is Inconsistent With**  
4 **The Designation of the Woods Class.**

5 The Settlement Agreement is inconsistent with the designation of the Wood's Class in  
6 several respects. First, the Wood Class consists of "persons and entities that own real property  
7 within the Basin . . . that have been pumping less than 25 acre feet per year on their property . . ."  
8 The class includes all overlying landowners that have been pumping less than 25 acre feet per year,  
9 not just those who may have used groundwater for "domestic purposes." Richard Wood has a  
10 serious conflict of interest if he now attempts to discriminate among members of the court-approved  
11 class by seeking a priority for himself and some members of the class to the detriment of other  
12 members of the class. Second, the Class consists of "persons and entities . . . that have been  
13 pumping less than 25 acre feet per year . . ." By contrast, the Settlement Agreement improperly  
14 attempts to settle the case on a "household" basis. The class consists of pumpers, not households.  
15 Several, indeed many, households may be served with groundwater extracted from one well. In  
16 short, the purported cap of 3 afy per household is not a cap at all with respect to water production  
17 from a well.

18 **B. The Settlement Agreement Requires The Court To Make**  
19 **Findings of Fact and Conclusions of Law Without Evidence.**

20 The Settlement Agreement improperly asks this Court to make findings of fact and  
21 conclusions of law which may prejudice the rights of parties who are not parties to the Settlement  
22 Agreement. For example, the Settlement Agreement states:  
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26 "To the extent that pumping by all overlying pumpers exceed 85% of  
27 the Federally Adjusted Native Safe Yield, any Assessments shall be  
28 borne by the Overlying Landowners (subject to the Wood Class  
Members 3 acre foot exemption). " (Settlement Agreement, p. 11,  
lines 7 through 9.)

1 The Overlying Landowners are not parties to the Settlement Agreement and cannot be bound  
2 thereby.

3 At page 12, lines 14 through 16, the Settlement Agreements provides: "Any pumping  
4 reductions needed because of the Wood Class exemption would be made solely by Overlying  
5 Owners from their 85% share of the Federal Adjusted Native Safe Yield." Again, the Public Water  
6 Suppliers are free to bargain away their rights, but not the rights of Overlying Owners that are not  
7 parties to the Settlement Agreement.  
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9 At page 12, lines 25 through 27, the Settlement Agreement requires that the "court expressly  
10 recognize that the 3 acre-foot per year Assessment-exempt pumping right, set forth in IV.D.2, above,  
11 is domestic use pursuant to California Water Code section 106. First, the Court cannot make such  
12 a finding without an evidentiary hearing. Second, the Wood Class consists of "persons and  
13 entities . . ." An entity is not a domestic water user. Third, although the parties to the Wood Class  
14 action are entirely free to resolve their dispute, they are not free to carve out a super-priority pumping  
15 right for the Wood Class to the detriment of all other Overlying Owners within the Basin.  
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17 **C. There Is No Evidence To Support Any Allocation**  
18 **of Groundwater Among Overlying Landowners.**

19 Many factors must be considered in the allocation of groundwater among overlying  
20 landowners. (See, e.g., Half Moon Bay Land Co. v. Torello (1916) 173 Cal. 543, 549 [riparian  
21 rights]; Tehachapi-Cummings County Wat. Dist. v. Armstrong (1975) 49 Cal.App.3d 992, 1000-  
22 1002 [overlying rights].) Any allocation must be based on the reasonable and beneficial needs of  
23 the overlying landowners for water. (E.g., City of Barstow v. Mojave Water Agency (2000) 23  
24 Cal.4th 1224, 1253; Armstrong, 49 Cal.App.3d at 1001.) What is reasonable is a question of fact  
25 and depends on the circumstances of each case. (E.g., Lux v. Haggin (1886) 69 Cal. 255, 398.) The  
26 difficulty in the application of the rule of correlative rights in extreme cases is no excuse for not  
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1 applying the rule. (Katz v. Walkinshaw (1903) 141 Cal. 116, 136-137.)

2 The Settling Parties have presented no evidence to support any allocation of 3 afy per  
3 household in the arid Antelope Valley. In short, the court has not been provided with any basis to  
4 apply the rule of correlative rights.

5 **D. There Is No Evidence To Support**  
6 **A Minimal Producer Exclusion.**

7 The Settlement Agreement provides for a 3 afy “exclusion” per household, however, the  
8 supporting declaration of Mr. Garner does not support any such exclusion. Exhibit C to such  
9 declaration includes pages 6 and 19 of the judgment but does not include the page (page 8) which  
10 contains the definition of “producer.” Exhibit D of such declaration does not include pages 9 and  
11 11 of the judgment which contain the definitions of “Minimal Producer” and “Producer,”  
12 respectively. Moreover, such judgment does not relieve a Minimal Producer from Minimal Producer  
13 Assessments. (See Ex. D, pp. I, 3 and 4.) Exhibit E to such declaration includes page 3 of the  
14 judgment which contains the definition of Minimal Producer but does not contain any page which  
15 contains the definition of “producer.” We suspect, but do not know, that a “producer” is one who  
16 extracts groundwater from a well as contrasted from a household that receives a groundwater supply  
17 from a well that may or may not be owned and operated by someone in the same household. In  
18 short, the “minimal producer” provisions in judgments in other adjudications do not support the  
19 proposed 3 afy per household exclusion here.

20 Indeed, the proposed water used by the Wood Class may be substantial. In his August 11,  
21 2008 Motion for Class Certification, Richard Wood estimated the class at 7,500. In his February 9,  
22 2009 Motion for Appointment of Expert, Mr. Wood estimated the class at 7,500 to 10,000. In his  
23 February 3, 2010 Brief Re Consolidation, Mr. Wood estimate the class at 5,000 to 10,000. There  
24 is no evidence as to how many “households” are owned or controlled by class members. Likewise,  
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1 there is no evidence as to how many wells have been historically operated by the Wood Class  
2 Members. Without such information, the Court and the other parties to this proceeding are left to  
3 speculate as to whether the proposed Wood Class water production is substantial or minimal.

4 **E. A Right to Pump A Specific Quantity of Water**  
5 **Must Also Include Metered Production.**

6 The Settlement Agreement is premised on a minimum 3 afy Assessment-free exempt  
7 pumping right. However, there is no provision in the Settlement Agreement which requires the Class  
8 Members, or “households” to install a meter to monitor production. Indeed, page 14, lines 10  
9 through 14 of the Settlement Agreement make clear that the Wood Class Members will not bear the  
10 cost of purchasing, installing, repairing and reading meters. Without meters, the 3 afy limitation is  
11 entirely illusory. There is no practical way for the Class Members, or any other party to this  
12 proceeding to monitor production to insure that the Class Members do not pump more water from  
13 the Basin than they legally entitled to. It would be absolutely improper for this Court to impose on  
14 Tejon, or any other Overlying Landowner, the financial obligation of installing meters for the benefit  
15 of other water producers within the Basin. Without effective production metering, any production  
16 limitation placed on the Wood Class Members is illusory.

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19 **F. Conclusion.**

20 The Wood class action should be settled. However, it must be settled on terms that are  
21 consistent with the Class description, on terms that do not impair the rights of any third party not a  
22 signatory to the Settlement Agreement, and on terms that do not hamstring the Court and other  
23 parties from reaching further resolution in this coordinated proceeding. Tejon joins in the comments  
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and objections of other parties on file herein and Tejon respectfully requests that Wood's motion be denied.

Dated: May 11, 2010

KUHS & PARKER

By /s/ Robert G. Kuhs  
Robert G. Kuhs, Attorney for  
Tejon

FA1291.01 - Tejon Ranch - Antelope Valley\Tejon Oppos to Mot for Prelim Approval of Class Stmt.wpd

**PROOF OF SERVICE**


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I, Valerie Hanners, declare:

I am employed in the County of Kern, State of California. I am over the age of 18 and am not a party to the within action; my business address is Kuhs & Parker, 1200 Truxtun Avenue, Suite 200, Bakersfield, California 93301.

On May 11, 2011, I caused the foregoing document(s) described as **OPPOSITION OF TEJON RANHCORP TO MOTION FOR PRELIMINARY APPROVAL OF WOOD CLASS SETTLEMENT** to be served on the parties in this action, as follows:

- (X) (BY ELECTRONIC SERVICE) by posting the document(s) listed above to the Santa Clara County Superior Court website: [www.scefilng.org](http://www.scefilng.org) regarding the Antelope Valley Groundwater matter.
- ( ) (BY U.S. MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, the above-referenced document(s) were placed in seal envelope(s) addressed to the parties as noted above, with postage thereon fully prepaid and deposited such envelope(s) with the United States Postal Service on the same date at Bakersfield, California, addressed to:
- ( ) (BY FEDERAL EXPRESS) I served a true and correct copy by Federal Express or other overnight delivery service, for delivery on the next business day. Each copy was enclosed in an envelope or package designated by the express service carrier; deposited in a facility regularly maintained by the express service carrier or delivered to a courier or driver authorized to receive documents on its behalf; with delivery fees paid or provided for; addressed as shown on the accompanying service list.
- ( ) (BY FACSIMILE TRANSMISSION) I am "readily familiar" with the firm's practice of facsimile transmission of documents. It is transmitted to the recipient on the same day in the ordinary course of business.
- (X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ( ) (FEDERAL) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
\_\_\_\_\_  
Valerie Hanners