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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 ANTELOPE VALLEY GROUNDWATER
14 CASES

15 Included Actions:

16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co.
18 Superior Court of California, County of Los
19 Angeles, Case No. BC325201;

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

25 Wm. Bolthouse Farms, Inc. v. City of
26 Lancaster
27 Diamond Farming Co. v. City of Lancaster
28 Diamond Farming Co. v. Palmdale Water Dist.
Superior Court of California
County of Riverside, consolidated actions
Case Nos. RIC 353840, RIC 344436,
RIC 344668.

**Judicial Council Coordination Proceeding
No. 4408**

QUARTZ HILL WATER DISTRICT
OMNIBUS OPPOSITION TO EX PARTE
APPLICATION TO AMEND CASE
MANAGEMENT ORDER AND VACATE
DISCOVERY AND TRIAL SETTING
ORDERS

Date: December 20, 2012
Time: 8:30 a.m.
Hon. Jack Komar

Quartz Hill Water District and Palmdale Water District opposes the ex parte applications to amend the case management conference statement and vacate the discovery and trial setting orders as follows:

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1. INTRODUCTION

Quartz Hill Water District, Palmdale Water District, and every other Public Water Supplier made every effort to settle this case over the last eighteen months. The Public Water Suppliers attended the conferences with Justice Robie and the numerous local meetings.

The Public Water Suppliers must balance the need to serve their current customers with the need to serve their future customers. Other parties do not have such a need. Proposed settlement provisions that at once time appeared to be fixed, other parties viewed as variable.

After eighteen months of effort, it is apparent that the different perspectives and needs of the parties will not currently allow for settlement. Some parties may settle, but it is anticipated that these parties have always had a community of interest that would have allowed settlement of this case even prior to the Phase 3 trial.

Bolthouse has brought a motion to delay this matter further based upon a proposed settlement amongst some of the parties. Eighteen months is enough delay. Settlement is not a reason for delay. The Phase Three trial started nearly two years ago. The decision was rendered over nineteen months ago. After a great deal of time and effort by almost all parties, the case did not settle. Allowing more delay, because some parties hope to settle, will not resolve this case sooner.

2. A LIMITED GROUP OF PARTIES CANNOT SHIELD THEMSELVES FROM LITIGATION BY SETTLING AMONGST THEMSELVES

Bolthouse argued at the December 11, 2012 hearing, and again argued in this ex parte application, that a stipulation will avoid litigation. Bolthouse argues that facts stipulated to are immune from scrutiny from the Court. Even if every party to this case stipulated, this Court would still scrutinize parties' claimed current pumping. Since every party has not stipulated, Bolthouse, and all other parties, must be prepared to prove and defend their current pumping claims (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224).

1 Obviously, it is unrealistic for every party to settle in a case of this size. But, the parties
2 who have the primary adverse interests in this case, the Public Water Suppliers and the land
3 owning parties, have not settled. Bolthouse and others cannot shield their claimed current pumping
4 by settling among themselves (*City of Barstow v. Mojave Water Agency, supra*, Cal.4th 1224,
5 1253).

6

7 **2. BOLTHOUSE’S REQUEST IS AN IMPROPER MOTION FOR**
8 **RECONSIDERATION**

9 Bolthouse does not cite the legal basis for its request to vacate the discovery order or trial
10 date. Since the practical effect of this motion is to amend a prior order, this is a motion for
11 reconsideration pursuant to Code of Civil Procedure section 1008(a) and (h).

12 As a motion for reconsideration, this motion fails. Code of Civil Procedure section 1008
13 requires an affidavit that states “what order or decisions were made, and what new or different
14 facts, circumstances, or law are claimed to be shown” (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th
15 674, 689) No affidavit is included. No new or different facts, circumstances, or law are shown. The
16 circumstances – that some parties expect to settle – were presented to this court on December 11,
17 2012.

18 In addition to showing new facts or circumstances, Bolthouse must also “must provide a
19 satisfactory explanation for the failure to produce the evidence at an earlier time” *New York Times*
20 *Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212. Since the only circumstance referenced in
21 the motion, that some parties might settle, was previously known, this showing is also not met.

22 This is an improper motion for reconsideration, and thus fails.

23

24 **2. NO GOOD CAUSE IS SHOWN TO VACATE THE DISCOVERY ORDER**

25 Quartz Hill has attempted to gather the evidence specified in the Court’s discovery order
26 for many months. That discovery was stayed at the hearing on November 9, 2012, and that stay has
27 not been subsequently addressed by this court. Since the Court’s discovery order requires the
28 production of current pumping information on December 21, 2012, and since the next phase of

1 trial will not address prescription, Quartz Hill does not request the Court address the stay at this
2 time. There is, however, a great deal of overlap regarding the evidence requested in that discovery
3 and the evidence requested in the Court's order.

4 The effort by Bolthouse, and others, to again delay providing this Court and parties with
5 basic foundational information regarding their current pumping ought to be rejected. Bolthouse,
6 and others, were served with discovery by Quartz Hill over a year ago, and the extension to
7 respond to that discovery was withdrawn over three months ago. Bolthouse, and others, should
8 have been prepared to respond to that discovery months ago, and thus should be prepared to
9 respond to the Court's discovery order by December 21, 2012.

10

11 **2. NO GOOD CAUSE IS SHOWN TO VACATE THE TRIAL DATE**

12 This court has stated on numerous occasions that the trial date is firm. California Rule of
13 Court Rule 3.1332(a) states "the dates assigned for a trial are firm. All parties and their counsel
14 must regard the date set for trial as certain."

15 California Rule of Court Rule 3.1332(c) sets forth the grounds for a continuance, which
16 regard the unavailability of witnesses, parties, or trial counsel. Other grounds are the substitution
17 of trial counsel; a new party; or the inability to obtain essential testimony, documents, or other
18 material evidence; or unanticipated change in the status of the case.

19 The only reason provided to this court, which is the same reason stated at the hearing on
20 December 11, 2012, is that some of the parties claimed to have settled. At that hearing, this Court
21 denied this request. The Court ought not to reconsider this matter.

22 The parties who claim to have settled amongst themselves may submit their settlement
23 agreement to the Court, at any time, for approval. At the last hearing, the court encouraged the
24 parties to submit that claimed settlement agreement "post haste."

25 Regardless of whether some parties choose to settle, this Court must still determine each of
26 the parties' current pumping. Evidence of this current pumping should be produced on December
27 21, 2012 and trial should commence February 11, 2013.

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3. THE COURT SHOULD NOT IMPOSE AN AUTOMATIC STIPULATION UPON PARTIES THAT DO NOT FILE OBJECTIONS

After parties have produced their evidence regarding their current production, Quartz Hill Water District, Palmdale Water District, and many other parties will endeavor to stipulate with those parties whose evidence of current production is reasonable. Considering the number of parties and counsel, these stipulations will likely take different forms and address the issues in different ways.

These agreements will hopefully start soon after the evidence has been disclosed, and will likely run up to and after the start of trial. Imposing an arbitrary deadline will not be helpful. The deadline of January 10, 2013 is too early and will not give the parties sufficient time to intelligently review every participant.

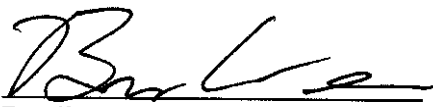
4. CONCLUSION

The Quartz Hill Water District and Palmdale Water District respectively request the court deny the request to vacate the discovery order and trial date and also deny the request to impose an automatic stipulation.

Respectively submitted

CHARLTON WEEKS LLP

Dated: December 19, 2012


Bradley T. Weeks
Attorney for Quartz Hill Water District

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PROOF OF SERVICE

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1031 West Avenue M-14, Suite A, Palmdale, California, 93551.

On December 19, 2012, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

QUARTZ HILL WATER DISTRICT OMNIBUS OPPOSITION TO EX PARTE APPLICATION TO AMEND CASE MANAGEMENT ORDER AND VACATE DISCOVERY AND TRIAL SETTING ORDERS

By posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on December 3, 2012


Gayle P.J. Fenald