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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF LOS ANGELES

11 ANTELOPE VALLEY GROUNDWATER
12 CASES

Judicial Council Coordination Proceeding No.
4408

13 Included Consolidated Actions:

Lead Case No. BC325201

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co. Superior Court of
16 California County of Los Angeles, Case No.
17 BC 325 201

ANTELOPE VALLEY RESOURCE
CONSERVATION DISTRICT REPLY TO
OPPOSITION TO MOTION FOR LEAVE
TO INTERVENE AND SET EVIDENTIARY
HEARING REGARDING
GROUNDWATER PUMPING RIGHTS

18 Los Angeles County Waterworks District No.
19 40 v. Diamond Farming Co. Superior Court of
20 California, County of Kern, Case No. S-1500-
21 CV-254-348

Date: December 13, 2022
Time: 9:00 a.m.
Location: 191 N. 1st Street, Department 22,
San Jose, CA 95113

22 Wm. Bolthouse Farms, Inc. v. City of
23 Lancaster Diamond Farming Co. v. City of
24 Lancaster Diamond Farming Co. v. Palmdale
25 Water Dist. Superior Court of California,
26 County of Riverside, consolidated actions,
27 Case Nos. RIC 353 840, RIC 344 436, RIC 344
28 668

Assigned Judge: Hon. Jack Komar (Ret.)

Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40 Superior Court of
California, County of Los Angeles, Case No.
BC 364 553

Richard A. Wood v. Los Angeles County
Waterworks District No. 40 Superior Court of
California, County of Los Angeles, Case No.
BC 391 869

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Antelope Valley Resource Conservation District, replies to opposition to the motion to
intervene filed by the Antelope Valley Watermaster on October 12, 2022.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 The Antelope Valley Resource Conservation District (hereafter “AVRCD”) seeks an order
5 from this court allowing it to intervene in this action. The AVRCD has an interest relating to
6 groundwater in the Basin, thus intervention is proper, pursuant to Code of Civil Procedure section
7 387(d)(1)(B).

8 The Antelope Valley Watermaster (hereafter “Watermaster”) agrees that AVRCD should
9 be allowed to intervene. No other party has opposed this motion.

10 Therefore, the only order which is sought from this Court – allowing AVRCD to intervene
11 – is unopposed. Accordingly, the Court should allow AVRCD to intervene.

12 AVRCD and the Watermaster both also agree that the court should set an evidentiary
13 hearing to determine AVRCD’s groundwater pumping rights.

14 Thus, there is no dispute between the order requested by AVRCD and the order agreed to
15 by the Watermaster.

16 **II. THE WATERMASTER’S REQUEST TO CONDITION THE ORDER FOR**
17 **INTERVENTION IS IMPROPER AND WITHOUT LEGAL BASIS**

18 The Watermaster attempts to condition the entry of an Order allowing intervention upon
19 the entry of an order that AVRCD pay the Watermaster \$58,870.02 and enjoining it from
20 groundwater pumping.

21 The Watermaster’s opposition cites no legal authority in support of the notion that a
22 person’s intervention in a lawsuit can be conditioned upon the entry of an Order to pay money and
23 an injunction. Code of Civil Procedure section 387 itself does not give the Court the power to
24 condition an order allowing intervention upon the payment of money or an injunction.

25 “Pursuant to section 387 the trial court has discretion to permit a nonparty to intervene
26 where the following factors are met: (1) the proper procedures have been followed; (2) the
27 nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the
28

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1 issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the
2 parties presently in the action.” *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383,
3 386.

4 The factors stated in *Reliance Ins. Co. v. Superior Court, supra*, 84 Cal.App.4th 383 are
5 present. The court in *Reliance*, nor in any of the other case, gave this Court authority to condition
6 the order allowing intervention upon the payment of money or the entry of an injunction (*Truck*
7 *Ins. Exchange v. Superior Court (Transco Syndicate No. 1)* (1997) 60 Cal.App.4th 342, 346).

8
9 **III. WATERMASTER’S ATTEMPT TO OBTAIN A JUDGMENT AGAINST**
10 **AVRCD THROUGH AN OPPOSITION TO A MOTION IS WITHOUT**
11 **LEGAL SUPPORT AND IMPROPER**

12 The Watermaster requests a judgment against AVRCD for \$58,870.02 by an opposition to
13 a motion. The Watermaster also requests an order enjoining pumping against AVRCD by that
14 same opposition.

15 The judgment purports to adjudicate and establish the rights of the
16 attorney under the agreement as against his client. This, of course, could have
17 been done only after the trial of an action in which the parties to the agreement
18 had been given an opportunity to present their respective demands and such
19 defenses, if any, as either might wish to assert against the demands of the other. It
20 could not be done *ex parte* nor in a summary manner. The right to be heard before
21 judgment is given is not only guaranteed by the Constitution but is carried
22 through all of the systems of procedure under which courts exercise their powers.
23 The constitutional right to a day in court embraces the privileges granted by
24 statute, for the powers of the court are limited not alone to what they may do but
25 also to the manner in which it may be done. A judgment cannot be given against
26 or in favor of one who is not a party to the action. *Overell v. Overell* (1937) 18
27 Cal.App.2d 499, 502.
28

1 The method of obtaining a money judgment in our legal system is a trial. The method of
2 obtaining a permanent injunction also a trial. The method of obtaining preliminary injunction is a
3 noticed motion.

4 The Watermaster has done none of the above. An Opposition to a motion is not an allowed
5 method to obtain a money judgment or an injunction. That will require a trial.

6
7 **IV. THE WATERMASTER IS ENTITLED TO NOTHING AGAINST AVRCD
BECAUSE IT IS NOT A PARTY TO THE JUDGMENT**

8 In its motion to intervene, AVRCD did not request this court to make any ruling regarding
9 its pumping rights under the Judgment. Such a request would deprive other parties their due
10 process rights to present argument and evidence regarding AVRCD's rights under the Judgment.
11 The most important right of AVRCD under the judgment will be its pumping rights. Once
12 AVRCD pumping rights are ascertained, another issue will be if AVRCD is required to purchase
13 Replenishment Water.

14 At the evidentiary hearing on this matter, if the Watermaster, or any other party, wishes to
15 provide evidence that AVRCD has pumped groundwater in excess of its pumping rights, it will
16 have the opportunity to present this evidence.

17 The Watermaster's request that this Court pre-judge this issue before hearing this evidence
18 at an evidentiary hearing, is improper, and should be denied.

19
20 **V. AVRCD IS NOT A PRESENTLY A PARTY TO THE JUDGMENT AND
THEREFORE DID NOT VIOLATE THE JUDGMENT**

21 AVRCD is not Party to the judgment, and accordingly does not owe the Watermaster any
22 money under the judgment. Because AVRCD is not a Party to the judgment, there is no ongoing
23 violation of the Judgment. "A judgment may not be rendered either against or in favor of one who
24 is not a party to the action." *Hutchinson v. California Trust Co.* (1941) 43 Cal.App.2d 571, 575.

25 AVRCD is not even a Party as that term is defined by the Judgment. Paragraph 3.5.27
26 defines a Party, and AVRCD does meet this definition. Once AVRCD intervened, then it will be a
27 Party, but not until then.
28

1 The claim that AVRCD currently owes the Watermaster any money, or is delinquent, is
2 not true. It is not true in the general sense, as stated in *Hutchinson v. California Trust Co.* It is also
3 not true under the terms of the Judgment. Until AVRCD is a Party, it is not obligated to pay any
4 Replacement Water Assessment. Nor does the Watermaster have an legal authority to demand
5 such payments.

6 Equally, AVRCD is not obligated to pay any Watermaster attorney fees or interest. The
7 judgment only applies to Parties. Judgment paragraph 18.4.12 only applies to Parties. Interest and
8 attorney fees may only be charged once assessment has become delinquent. Because there can be
9 no assessment, there can be no delinquency.

10 Further, there may never be an assessment for Replacement Water. If the court determines
11 that AVRCD groundwater rights exceeded its pumping, then no Replacement Water assessments
12 will be due.

13
14 **VI. AVRCD CLEARLY HAS THE RIGHT TO PRODUCE GROUNDWATER**

15 AVRCD, and its predecessors, has been continuously pumping groundwater since at least
16 1949. As a public entity, the AVRCD, and its predecessor the University of California, did not
17 need to continuously pump groundwater to protect is production rights, but it has. AVRCD is not
18 obligated to seek a new production right, as argued in the Opposition. AVRCD has a production
19 right based upon its ownership of its property. This right was not (and could not be) taken away by
20 the Judgment. This right was accommodated by paragraph 5.1.10 of the Judgment.

21 AVRCD bore no obligation to seek intervention earlier, and the Watermaster has offered
22 no contrary legal authority.

23 The production rights of the AVRCD, as a non-stipulating party are stated in paragraph
24 5.1.10. This paragraph anticipates the court will provide a non-stipulating party with Production
25 Rights, as stated in the judgment. AVRCD is entitled to receive those Production Rights, based
26 upon the evidence it anticipates presenting at the evidentiary hearing. The evidence will show that
27 AVRCD pumps groundwater from property it owns, and reasonable and beneficially uses that
28 water on its own property. Accordingly, AVRCD holds Overlying Production Rights, as described

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on Exhibit 4 of the Stipulation for judgment, although without some of the benefits, as also described in paragraph 5.1.10.

VII. CONCLUSION

The Watermaster’s attempt to condition AVRCD’s intervention should be denied. AVRCD should be allowed to unconditionally intervene in this action.

CHARLTON WEEKS LLP



Dated: December 6, 2022

Bradley T. Weeks
Attorney for Antelope Valley Resource Conservation
District, Intervenor

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The exact title of the document, or documents, served, or served and filed, is identified below. The business address of the person making the service is 1031 West Avenue M-14, Suite A; Palmdale, California, 93551. This electronic service occurred, and the person making the service, is employed, in Los Angeles county, and is over the age of 18 years. The electronic service address of the person making the service is electronicserviceaddress@charltonweeks.com. The document, or documents, identified below were served electronically.

The date of Service is 12/6/2022. The name of the person making the service is Gayle Fenald.

The documents served are as follows:

ANTELOPE VALLEY RESOURCE CONSERVATION DISTRICT REPLY TO OPPOSITION TO MOTION TO INTERVENE AND SET EVIDENTIARY HEARING

Name and Electronic Service Address of each person Served

I posted the documents listed above to the Antelope Valley Groundwater Cases (avwatermaster.org) website.

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

Date: 12/6/2022

/s/ Gayle Fenald
Gayle Fenald