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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

ANTELOPE VALLEY
GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No.
40 v. Diamond Farming Co. Superior Court of
California County of Los Angeles, Case No. BC
325 201 Los Angeles County Waterworks
District No. 40 v. Diamond Farming Co.
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348Wm. Bolthouse
Farms, Inc. v. City of Lancaster Diamond
Farming Co. v. City of Lancaster Diamond
Farming Co. v. Palmdale Water Dist. Superior
Court of California, County of Riverside,
consolidated actions, Case No. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

AGWA'S OBJECTION TO PROPOSED
ORDER APPROVING REVISED CLASS
NOTICE FOR SMALL PUMPER CLASS
ACTION

Date: June 12, 2009

Time: 9:00 AM

Department: Santa Clara Superior Court,
Dept. 17C

1 The Antelope Valley Groundwater Agreement Association ("AGWA") hereby objects to the
2 Wood Class' Proposed Order Approving Revised Class Notice for Small Pumper Class Action, filed
3 on June 2, 2009 (the "Order"), as it is inconsistent with the direction provided by the Court during its
4 May 29, 2009 teleconference with counsel.

5
6 The proposed Order seeks to modify the Court's prior order of May 6, 2009, such that the
7 mailing of the Notice of Class Action to potential members inside the Public Water Suppliers'
8 service area will be deferred indefinitely. AGWA believes that, in light of the expenses and delays
9 already encountered, notice to indispensable parties should not be further delayed. If notice of the
10 Class action is not to be provided to those class members, the Public Water Suppliers should
11 properly name and serve all necessary parties within their service areas.

12
13 Counsel for the Small Pumper Class has proposed changes to the Class Notice and the Order
14 Approving Class Notice based on his concern that sending notice to individuals within the Public
15 Water Suppliers' service areas will result in too many parcel owners being included in the Class.
16 This is not the case. The Class is defined to include only those who pump less than twenty-five acre-
17 feet per year, and the proposed Class Notice makes this clear. The fact that hundreds of persons
18 outside the Class definition may receive the Class Notice and fail to return the questionnaire
19 indicating that they are not properly members of the Class does not render them class members; they
20 are simply notice recipients. Only class members, as defined by the class definition, can be bound
21 by the Court's judgment. (*Home Sav. & Loan Assn. v. Superior Court* (1974) 42 Cal.App.3d 1006
22 ("The critical reason for notification of members of the class on whose behalf a class action has been
23 brought is that notification makes possible a binding adjudication and an enforceable judgment *with*
24 *respect to the rights of the members of the class.*") (emphasis added); *Chance v. Superior Court of*
25 *Los Angeles County* (1962) 58 Cal.2d 275 (judgment in a class action is res judicata as to only
26 defined class members).) Nevertheless, counsel for the Small Pumper Class is sufficiently
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1 concerned that persons outside the Class definition may receive the Class Notice, that he has
2 requested the Court appoint an expert to identify members of the Class with greater precision before
3 the Class Notice is disseminated.

4 As a means of ensuring that all potential class members are put on notice of this case, during
5 its May 29, 2009 teleconference with counsel, the Court suggested the dissemination of a form of
6 notice along with billing statements to customers in Public Water Suppliers' service areas. The
7 Wood Class' Proposed Order does not include the Court's suggestion, however, and would only
8 require that potential class members within the Public Water Suppliers' service areas receive notice
9 by publication. While the Court and Mr. McLachlan discussed the potential for notice via
10 publication in the future, this was not the direction that the Court provided counsel.

11 Further, notice by publication makes the nuanced Class structure created in this case
12 unnecessary. Based on the Class structure – which the Court and the parties have spent countless
13 hours perfecting – the Court should order that the Class Notice should be sent to all parties inside the
14 Public Water Suppliers' service areas, accompanying billing statements, to alleviate the problem. In
15 light of AGWA's concerns with Class Counsel's interpretation of the Class definition itself,¹ the
16 Court's adoption of the Order as proposed – delaying any appreciable notice to Class members
17 within the Public Water Suppliers' service areas indefinitely – will only add more confusion
18 regarding who is in the Small Pumper Class.

19 In AGWA's Motion to Decertify Small Pumper Class, filed April 30, 2009, AGWA
20 identified a lack of commonality between members of the Small Pumper Class as defined,
21 particularly the adversity between agricultural interests and other parties' interests within the Small


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26 ¹ As was discussed during the May 29, 2009 teleconference, counsel for the Small Pumpers Class
27 views the Class as only including the owners of parcels within the Antelope Valley who physically
28 pump less than 25 acre-feet per year from a well located on the parcel. Contrary to the law regarding
the exercise of overlying groundwater rights, Class Counsel's definition of the Class would exclude

1 Pumper Class. In light of the ongoing confusion regarding the Class itself and the Notice of the
2 Class Action, AGWA continues to question the adequacy of the Small Pumper Class definition, and
3 believes the responses to the questionnaire accompanying the Class notice may reveal further
4 conflicts of interests within the same class. Such circumstances may require AGWA to re-file its
5 Motion to Decertify Small Pumper Class.
6

7 For the reasons above, AGWA requests that, should the Court adopt the revised Notice of
8 Class Action proposed by Class Counsel, the Court order that if notice cannot be timely mailed to
9 each of the Class members within the Public Water Suppliers' service areas, the Public Water
10 Suppliers must provide notice by inclusion of notice of the Class Action within their regular water
11 bills.
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14 Dated: June 9, 2009

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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16 By: 
17 MICHAEL T. FIFE
18 BRADLEY J. HERREMA
19 ATTORNEYS FOR AGWA
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27 the owners of parcels upon which less than 25 acre-feet per year of groundwater is applied, solely
28 because that water may be pumped from a well that is located on a different parcel.

BROWNSTEIN HYATT FARBEN SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On June 9, 2009, I served the foregoing document described as:

**AGWA'S OBJECTION TO PROPOSED ORDER APPROVING REVISED CLASS NOTICE
FOR SMALL PUMPER CLASS ACTION**

on the interested parties in this action.

By posting it on the website at 3:00 p.m. on June 9, 2009.
This posting was reported as complete and without error.

(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed in Santa Barbara, California, on June 9, 2009.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME


SIGNATURE