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LITTLEROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT,  
NORTH EDWARDS WATER DISTRICT, DESERT LAKES COMMUNITY SERVICES DISTRICT,  
LLANO DEL-RIO WATER CO., LLANO MUTUAL WATER CO., BIG ROCK MUTUAL WATER  
CO., and LITTLE BALDY WATER CO.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Coordinated Proceeding  
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER  
CASES

Included Actions:

Los Angeles County Waterworks District No. 40  
v. Diamond Farming Co. Los Angeles County  
Superior Court Case No. BC 325201;

Los Angeles County Waterworks District No. 40  
v. Diamond Farming Co., Kern County Superior  
Court, Case No. S-1500-CV-234348;

Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster v.  
Palmdale Water District, Riverside County  
Superior Court, Consolidated Actions, Case Nos.  
RIC 353840, RIC 344436, RIC 344668

AND RELATED CROSS-ACTIONS

**Judicial Council Coordination No. 4408**

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar – Dept. 17

**OPPOSITION TO MOTION TO  
DISQUALIFY**

**DATE: July 10, 2009**

**TIME: 9:00 a.m.**

**DEPT: 17C**

1 I. INTRODUCTION

2 Lemieux & O'Neill represents a group of water suppliers including Littlerock Creek Irrigation  
3 District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake Community Services  
4 District, Big Rock Mutual Water Company, Little Baldy Mutual Water Company, Llano-Del Rio Water  
5 Company, and Llano Mutual Water Company (hereafter "Lemieux & O'Neill Parties"). The Lemieux &  
6 O'Neill Parties are public entities and private water companies.

7  
8 Through the instant motion, the Wood Class seeks to disqualify Lemieux & O'Neill from this case  
9 on the grounds the public and private water companies have a potential conflict with each other. The  
10 Wood Class argues there is an actual conflict of interest because the Wood Class believes the Lemieux &  
11 O'Neill "is simultaneously representing plaintiffs and defendants in the same case." This statement is  
12 false. No party in the Lemieux & O'Neill group has a claim against another party in the group. Every  
13 party in the Lemieux & O'Neill group is a defendant to a complaint filed by the County of Los Angeles.  
14 The Wood Class has been informed of their error, but as of the date of this opposition, has refused to  
15 withdraw their motion.

16 The Wood Class has no standing to make this claim because its members are not clients of  
17 Lemieux & O'Neill. Further, the Rules of Professional Conduct are clear that potential conflicts may be  
18 waived as (is the case here). In fact, the Wood Class's premise is also wrong because the water rights  
19 among public and private water suppliers are determined by use and not by the legal status of the entity.  
20 Finally, this motion was filed unreasonably late and has been made primarily for tactical reasons in an  
21 effort to avoid trial. The court should discourage these sharp practices.

22 II. ARGUMENT

23 A. **THE WOOD CLASS HAS PROVIDED NO EVIDENCE OF CONFLICT AMONG**  
24 **THE PARTIES REPRESENTED BY LEMIEUX & O'NEILL**

25 Motions to disqualify counsel are strongly disfavored. (*Visa U.S.A. v. First Data Corp.* (N.D. Cal.  
26 2003) 241 F.Supp. 2d 1100, 1104 (applying California Rules of Professional Conduct); *In re Marvel*  
27 (N.D. Cal. 2000) 251 B.R. 869 (applying California Rules of Professional Conduct). "A motion for

1 disqualification of counsel is a drastic measure which courts should hesitate to impose except when of  
2 absolute necessity. They are often tactically motivated; they tend to derail the efficient progress of  
3 litigation.” (*Id.*) As such, requests for disqualification “should be subjected to particularly strict judicial  
4 scrutiny.” (*Optyl Eyewear Fashion Int’l Corp. v. Style Cos.* (9<sup>th</sup> Cir. 1985) 760 F.2d 1045, 1050 (applying  
5 California Rules of Professional Conduct, citations omitted).)

6 Assuming there is standing, the Wood Class must show an *actual* conflict of interest exists  
7 between the Lemieux & O’Neill parties. A *potential* conflict may be waived by the parties. The Wood  
8 Class fails to offer evidence of adversity among these parties. Instead, the Wood Class says a conflict  
9 must exist because “one law firm, Lemieux & O’Neill . . . represents both cross-complainants and cross-  
10 defendants in the Public Water Suppliers’ cross-complaint for declaratory and injunctive relief.” (Mot.  
11 Disq., p. 3:7-10.) This statement misrepresents the pleadings.

12 The parties in the Lemieux & O’Neill Group are *defendants* to the complaint filed by County  
13 Waterworks District No. 40. This complaint was originally filed on December 1, 2004, naming Littlerock  
14 Creek Irrigation District and Palm Ranch Irrigation District. (Declaration of W. Keith Lemieux  
15 (“Lemieux Decl.”), ¶ 6, Exh. “A”.) A Second Amendment to the complaint was filed on May 22, 2006 to  
16 include North Edwards Water District and Desert Lake Community Services District. Doe Amendments  
17 were then filed on April 4, 2007, naming defendants Llano Del Rio Water Company (Doe 205), Llano  
18 Mutual Water Company (Doe 207), Big Rock Mutual Water Company (Doe 200), and Little Baldy Water  
19 Company (Doe 204). (Lemieux Decl., ¶ 8, Exhs. “B” and “C”.) As the court can see by reference to  
20 these documents, the amendments were clearly made as “Does” to the County’s original complaint.

21 In September, 2007, each of the private water suppliers to the Lemieux group filed a separate  
22 answer to the complaint of County Waterworks District No. 40. However, this answer was erroneously  
23 entitled “Answer of [name] to First Amended Cross-Complaint of Public Water Suppliers for Declaratory  
24 and Injunctive Relief and Adjudication of Water Rights.” These parties have subsequently filed a Notice  
25 of Errata to change the title of these documents to “Answer to Los Angeles County Waterworks District  
26 No. 40’s Complaint.” For the convenience of this court, the Notices of Errata are attached as Exhibits  
27 “D” through “G” to the Lemieux Decl.)

1 In other words, the parties represented by Lemieux & O'Neill, both public and private, are in the  
2 identical position as defendants to the County's original complaint. The Wood Class's confusion  
3 apparently comes from the fact a separate cross-complaint was filed by the attorneys for the County on  
4 behalf of the "public water suppliers." This cross-complaint includes Littlerock Creek Irrigation District  
5 and Palm Ranch Irrigation District as *cross-complainants*. However, this cross-complaint does *not* state  
6 any claim against any party in the Lemieux & O'Neill group. (Concurrently with this motion, the  
7 Lemieux & O'Neill group has requested leave to amend its cross-complaint to avoid even the appearance  
8 of a conflict.)

9 The amendment at issue is clear and unambiguous. It is stated as a "Doe Amendment" to the  
10 original complaint. (The Cross-Complaint has Roe amendments, with a different numbering system.) It  
11 was filed by Best, Best & Krieger on behalf of the County of Los Angeles Waterworks District No. 40,  
12 the party to the original complaint. The summons attached is the original summons issued with the  
13 original complaint. Therefore, the Wood Class should have known that their suggestion the Lemieux &  
14 O'Neill parties filed claims against one another was inaccurate at the time this motion was filed.

15 **B. THE WOOD CLASS LACKS STANDING TO SEEK DISQUALIFICATION**

16 Before an attorney may be disqualified, it must first be established the party seeking the attorney's  
17 disqualification has standing. (*Civil Service Comm'n v. Superior Court* (1984) 163 Cal.App.3d 70, 76-77  
18 [209 Cal.Rptr. 159].) The most common way of establishing standing is for the party seeking  
19 disqualification to demonstrate he was (or is) "represented" by the attorney. (*Id.*) Other courts have found  
20 standing is conferred by a breach of the duty of confidentiality owed to the complaining party, regardless  
21 of whether a lawyer-client relationship existed. (*DCH Health Servs. v. Waite* (2002) 95 Cal.App.4<sup>th</sup> 829,  
22 832 [115 Cal.Rptr.2d 847] (noting that a lawyer may be disqualified after improper contacts with an  
23 opposing party's expert witness); see also *Am. Airlines v. Sheppard, Mullin, Richter & Hampton* (2002)  
24 96 Cal.App.4<sup>th</sup> 1017, 1033-34 [117 Cal.Rptr. 2d 685] (holding that conflict may arise from an attorney's  
25 relationship with a non-client where confidential information has been disclosed or there is an expectation  
26 that the attorney owes a duty of fidelity); *Coyler v. Smith* (C.D. Cal. 1999) 50 F.Supp.2d 966, 971  
27 (holding that non-clients have standing to raise serious ethical breaches).)

1 No member of the Wood Class ever claimed to have been represented by Lemieux & O'Neill.  
2 The Wood Class has not claimed it has tendered confidential information to Lemieux & O'Neill. In fact,  
3 the Wood Class made no claims to support standing at all.<sup>1</sup> The Wood Class appears to argue that  
4 standing is unnecessary because the Lemieux & O'Neill group may somehow taint the case on appeal.  
5 There is simply no case law to support this proposition. To pursue this motion, the Wood Class needed to  
6 establish standing. It has failed to do so. Therefore, the motion must be denied.

7 **C. REPRESENTATION OF PARTIES WITH POTENTIAL CONFLICT IS**  
8 **PERMITTED BY THE RULES OF PROFESSIONAL CONDUCT**

9 Rule of Professional Conduct, Rule 3-310 provides:

10 “( c) A member shall not, *without the informed written consent* of each client: [¶] . . .  
11 [a]ccept representation of more than one client in a manner in which the interest of the  
12 clients potentially conflict . . .” (Rule of Professional Conduct, Rule 3-1310.)

13 A potential conflict does not warrant automatic disqualification of joint counsel when permitted by  
14 informed, written consent of all of the parties involved. (Rule 3-310(c).) (*Gong v. RFG Oil, Inc.* (2008)  
15 166 Cal.App.4<sup>th</sup> 209 [82 Cal.Rptr. 3d 416]; Prof Conduct Rule 3-310(c ).) In other words, representation  
16 of potentially adverse parties in the same lawsuit does not require *per se* disqualification as suggested by  
17 the Wood Class. (*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4<sup>th</sup> 294, 302 [106  
18 Cal.Rptr.2d 906] (no disqualification “when only hypothetical conflict exists”); *Federal Home Loan*  
19 *Mortgage Corp. v. La Conchita Ranch Co.* (1998) 68 Cal.App.4<sup>th</sup> 856, 862 [80 Cal.Rptr.2d 634]  
20 (mandatory disqualification is not justified by “some hypothetical possibility” of adversity between  
21 mortgagee and mortgagors).)

22 No member of the Lemieux & Group has ever asserted a claim against any other member of this  
23 group. At best, there is a potential conflict of interest. Under the California Rules, a potential conflict of  
24 interest gives rise to the obligation to obtain informed written consent when attorneys decide to represent  
25 more than one client in the same lawsuit. (*In re Jaeger* (C.D. Cal. 1997) 213 B.R. 578, at 584

26 <sup>1</sup> The Wood Class makes a vague assertion that some parties in the Lemieux & O'Neill group may have  
27 obtained confidential information from some other parties outside the Wood Class. It is unclear

1 (“California rules always require the informed written consent of each client before an attorney may  
2 jointly represent two or more clients in the same lawsuit”). Defense counsel fulfilled this obligation by  
3 obtaining signed conflict waivers, in which each Defendant agreed to their concurrent representation.  
4 (Lemieux Decl. ¶ 5.) All Defendants recognized the potential for conflict amongst them, and waived their  
5 rights in order to enjoy the benefit of joint representation by defense counsel. (Lemieux Decl., ¶ 5.) After  
6 being advised of the current motion, all Defendants reaffirmed their waivers of any potential conflict of  
7 interest among them. (Lemieux Decl., ¶ 5.) Therefore, representation of the parties in the Lemieux &  
8 O’Neill group was proper under the Rules of Professional Conduct.

9       However, the Wood Class argues that even if a waiver was obtained it is automatically ineffective.  
10 None of the cases cited by the Wood Class support their “mandatory” argument. Both *Tsakos Shipping &*  
11 *Trading v. Juniper Garden Townhomes* (1993) 12 Cal.App.4<sup>th</sup> 74 [15 Cal.Rptr.2d 585], and *People v.*  
12 *Speedee Oil Changes Systems* (1999) 20 Cal.4<sup>th</sup> 1135 [86 Cal.Rptr.2d 816] involved cases where there  
13 was no informed written consent. This authority is inapposite to the Wood Class’s motion because the  
14 motion was not made by a party in the Lemieux & O’Neill group. Whether or not a party within the  
15 group could somehow later challenge the effectiveness of the waiver is a moot point because no such  
16 party has sought disqualification.

17       In fact, the Wood Class’s argument is circular. It wishes to have this court disqualify Lemieux &  
18 O’Neill solely out of concern that some party in the Lemieux & O’Neill group may seek disqualification  
19 in the future. Clearly, it is the right of the parties in the Lemieux & O’Neill group to determine who is to  
20 be their attorney, not the Wood Class.

21       The instant case is precisely the kind of situation contemplated by Rule 3-310. While any party to  
22 this case could theoretically have a claim against any other party to this case, it is up to that party to  
23 determine whether or not the claim worth pursuing. Rule 3-310 permits a party to waive potential claims  
24 in exchange for the benefits of joint representation: reduced costs, and the ability to retain an attorney  
25 with specific expertise in this specialized field of law. In a groundwater adjudication, with literally  
26

27 specifically what information the Wood Class is referring to.

28 OPPO.MtnDisqualify.doc

1 thousands of parties, Rule 3-310 allows for efficient litigation where it otherwise might be impossible.  
2 The Wood Class demonstrates no legal or policy reason to depart from the Rules of Professional Conduct  
3 in this case. This court should find that a waiver of conflict is sufficient for representation.

4 **D. THERE IS NO INHERENT CONFLICT OF INTEREST BETWEEN PUBLIC AND**  
5 **PRIVATE WATER SUPPLIERS**

6 The Wood Class presumes public and private water companies have distinguishable claims to the  
7 use of water simply by virtue of their private or public status. The fact that the public water supplier is a  
8 public entity, as opposed to a private entity, does not determine the nature the public suppliers' water  
9 right. Public and private water suppliers can assert appropriative and prescription claims by alleging they  
10 pumped water on their own behalf. Likewise, both public and private water suppliers might assert  
11 overlying rights based on the allegation that they are pumping water *on behalf* of their members. In fact,  
12 public and private water suppliers could assert a right to pump based on some other right, such as a  
13 surface water right if the pumping occurs from a known and definite channel. Public water suppliers, like  
14 all other parties in this action, have the potential to assert a variety of water rights depending on where the  
15 water is drawn and the historical period of use.

16 Some of the private water companies in this case have asserted overlying rights. Other private  
17 water suppliers have asserted appropriative rights. Each of the public and private water suppliers  
18 represented by Lemieux & O'Neill will claim both overlying, appropriative and, in two cases, surface  
19 rights to use water. These claims will be made in the alternative. (As noted above, none of these claims  
20 have been asserted against any other party in the Lemieux & O'Neill group.) Therefore, the claims made  
21 by both the private and public water suppliers in the Lemieux & O'Neill group are indistinguishable from  
22 each other.

23 The Wood Class appears to be concerned because it does not know which "camp" the private  
24 water suppliers should be placed in. However, the private water companies are not unique in this regard.  
25 In fact, members of the Wood Class might themselves be confused. The Wood Class includes anyone  
26 who pumps less than 25 acre feet per year. This will include overlying water users, appropriative users  
27

and, perhaps, surface water users. The Wood Class will need to do some additional work before it can decide into which “camp” its own members belong.

**E. THIS DILATORY MOTION WAS BROUGHT FOR IMPROPER PURPOSES**

Where the party opposing an attorney disqualification motion can demonstrate prima facie evidence of unreasonable delay in bringing the motion causing prejudice to the present client, disqualification should not be ordered, and the burden then shifts back to the party seeking disqualification to justify the delay. (*Gong v. RFG Oil, Inc.* (2008) 166 Cal.App.4<sup>th</sup> 209 [82 Cal.Rptr. 3d 416].) The Wood Class should have known of Lemieux & O’Neill’s representation of Big Rock Mutual Water Co., Little Baldy Water Co. and Llano Del-Rio Water Co. and Llano Mutual Water Co. since September 26, 2007. (Lemieux Decl. ¶ 8.) The Wood Class waited several years to bring this motion, and offers no explanation for this prejudicial delay.

In exercising discretion with respect to granting or denying an attorney disqualification motion, a trial court may properly consider the possibility the party brought the motion as a tactical device to delay litigation. (*Gong, supra*, 166 Cal.App.4<sup>th</sup> 209.) The timing of this motion is very interesting. It comes at a time when many landowner parties, including the Wood Class, are trying desperately to avoid the next phase of trial. Concurrently with this motion, requests have been made (or will be made) to both delay the trial and to dismiss the complaint outright. The Wood Class has also made several attempts to get some members of the Lemieux & O’Neill group to pay for its expert fees.

On June 19, 2009, counsel for the Lemieux & O’Neill group tendered correspondence to Class counsel for the Wood Class informing Class counsel of the factual errors contained in its motion. (Lemieux Decl., ¶ 12, Exh. “H”.) The correspondence outlined the procedural history of this case and included copies of the Doe Amendments for the private water companies in the Lemieux & O’Neill group. This demonstrated the motion was made in error. The correspondence concluded with a request to withdraw the motion.

This correspondence was followed up by a series of phone calls on June 22 and 23, 2009, between counsel for the Wood Class and the Lemieux & O’Neill group. During these calls, the attorneys reviewed the documents in this case. Counsel for the Lemieux group specifically pointed out that the Doe



1 Amendments were made to the original complaint, not the cross-complaint. Counsel for the Wood Class  
2 indicated they intended to use this disqualification motion to discuss general problems with the pleading.  
3 Counsel for Lemieux group informed counsel for the Wood Class this was an improper use of a  
4 disqualification motion, and indicated this conversation would be brought to the attention of the judge.

5 This motion appears to be another tactic to delay or avoid the trial. If disqualification is granted  
6 the Wood Class apparently understands that there is an automatic right of appeal. Class counsel  
7 apparently hopes this motion will guarantee a delay of trial during such appeal. In the meantime, its  
8 members will continue to mine the basin for water and, perhaps, irrevocably damage this precious natural  
9 resource. The court should resist these sharp tactics and deny the motion.

10  
11 DATED: June 26, 2009

LEMIEUX & O'NEILL

12 /s/

13 By: \_\_\_\_\_

14 W. KEITH LEMIEUX

15 Attorneys for LITTLE ROCK CREEK IRRIGATION  
16 DISTRICT, PALM RANCH IRRIGATION DISTRICT  
17 And Cross-Defendants, NORTH EDWARDS WATER  
18 DISTRICT and DESERT LAKES COMMUNITY  
19 SERVICES DISTRICT  
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, )  
3 ) ss.  
4 COUNTY OF VENTURA )

5 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 2393 Townsgate Road, Suite 201, Westlake Village,  
7 California 91361.

8 On **June 26, 2009**, I posted the following document(s) to the website <http://www.scefiling.org>, a  
9 dedicated link to the Antelope Valley Groundwater Cases:

10 **OPPOSITION TO MOTION TO DISQUALIFY THE FIRM OF LEMIEUX & O'NEILL**

11 I declare under penalty of perjury under the laws of the United State of America that the above is  
12 true and correct.

13 Executed on June 26, 2009, in Westlake Village, California.

14 /s/

15 \_\_\_\_\_  
16 KATHI MIERS  
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