

1 WAYNE K. LEMIEUX (SBN 43501)
2 W. KEITH LEMIEUX (SBN 161850)
3 CHRISTINE CARSON (SBN. 188603)
4 LEMIEUX & O'NEILL
5 4165 E. Thousand Oaks Blvd., Suite 350
6 Westlake Village, CA 91362
7 Telephone: (805) 495-4770
8 Facsimile: (805) 495-2787

9 Attorneys for
10 LITTlerock Creek Irrigation District, PALM RANCH IRRIGATION DISTRICT,
11 NORTH EDWARDS WATER DISTRICT, DESERT LAKE COMMUNITY SERVICES DISTRICT,
12 LLANO DEL RIO WATER CO., LLANO MUTUAL WATER CO., BIG ROCK MUTUAL WATER
13 CO.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

16 Coordinated Proceeding
17 Special Title (Rule 1550(b))

18 ANTELOPE VALLEY GROUNDWATER
19 CASES

20 Included Actions:

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

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

27 Wm. Bolthouse Farms, Inc. v. City of Lancaster
28 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. 12

**REPLY TO OPPOSITIONS TO MOTION
FOR AN ORDER CLARIFYING AND
MODIFYING THE ORDER RE: MOTION
FOR AN ORDER AUTHORIZING COURT-
APPOINTED EXPERT WORK ENTERED
DECEMBER 11, 2012**

**DATE: July 29, 2013
TIME: 10:30 a.m.
DEPT.: 48 (Los Angeles)**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 As a preliminary matter, the court should hear the add-on motion prior to the instant motion because
3 the outcome of the add-on motion may impact the scope of any amendment to the order on the Court-
4 appointed expert.

5
6 **I. INTRODUCTION**

7 It is important to note that two key circumstances have changed since the Court entered the Order
8 regarding the Court-appointed Expert: (1) the new *Wood v. AV Material* Complaint naming landowners
9 was filed, and (2) the Phase 4 trial determined the pumping for 2011-2012 of parties to the groundwater
10 adjudication. Based on these changed circumstances, the Order regarding the Court-appointed Expert
11 should be modified. The current order would force small public agencies, who serve tiny communities in
12 the desert, to front expert costs on behalf of large agribusinesses. Now that (1) the Wood Class has
13 named the landowners, and (2) a methodology exists to assign a percentage value to each party's share of
14 costs, the Court should modify the subject order as further set forth below.

15 **II. ARGUMENT**

16 **A. NONE OF THE PARTIES HAVE SUBSTANTIVELY OPPOSED THE IDEA OF**
17 **THE TEN PUBLIC WATER SUPPLIERS FRONTING THE COURT-APPOINTED**
18 **EXPERT COSTS *PROPORTIONATELY* PROVIDED THEY TIMELY PAY**

19 None of the parties have substantively opposed the idea that the costs should be proportional by
20 pumping among Public Water Suppliers as long as bills are timely paid. The Oppositions have only
21 objected to costs being spread beyond the 10 public water suppliers.¹ The November 9, 2012 transcript
22 states that the "Public Water providers who have prescriptive claims be responsible *among themselves*
23 for the reimbursement or payment of that amount of \$80,000." (RT, 51:1-4, posted by District 40 on
24

25 ¹ The Wood Class Opposition makes an erroneous procedural argument that the motion is not based on
26 changed circumstances. In fact, the changed circumstances are discussed at page 5 of the Memorandum
27 of Points and Authorities in support of the Motion, as well as the Reply.

1 July 11, 2013[Emphasis added].)² Moving parties understood this to mean that the 10 subject public
2 water suppliers would be permitted to stipulate between themselves the percentage each would pay
3 according to acre feet pumped or connections, provided they front the costs in a timely manner.
4 However, when Moving Parties received the expert bills, they were told they must each pay within 15
5 days \$777 on the first bill, regardless of size. Since no parties have offered any substantive reasons why
6 the 10 public water suppliers should not pay proportionately by 2011-202 pumping, moving forward, at
7 the very least, this should be permitted. It will not delay payment, as the court has already determined
8 pumping for 2011-2012, and none of the PWS parties have objected to the concept of the 10 PWS
9 parties paying proportionately.

10
11 **B. THE NOVEMBER 9, 2012 COURT TRANSCRIPT REGARDING THE MOTION**
12 **TO APPOINT AN EXPERT INDICATES THAT THE LANDOWNERS WERE**
13 **HOLDING UP A STIPULATION ON THE WOOD CLASS' PUMPING,**
14 **NECESSITATING THE APPOINTMENT OF AN EXPERT; HOWEVER, AT**
15 **THAT TIME, *WOOD V. A.V. MATERIAL* HAD NOT YET BEEN FILED**

16 At the November 9, 2012 hearing, it was clear that it was the *landowners* who were holding up a
17 stipulation on Wood Class' pumping, necessitating the appointment of an expert. (RT, 49:20-50:4.) Mr.
18 McLachlan indicated at that time he may be filing a new class action against landowners. That action
19 has now been filed and it is the subject of an add-on motion. An add-on motion is set for hearing the
20 same day as the instant motion. The filing of the new *Wood* case against landowners is a changed
21 circumstance, warranting a change in the allocation of the expert costs.

22 The new class action, *Wood v. A.V. Material* appears to name all landowner parties to the instant
23 groundwater adjudication. If this case is to be included as an add-on case, then the public water
24 suppliers and landowner defendants to *Wood v. A.V. Material* whose 2011-2012 pumping was
25 adjudicated (with the exception of the federal government) should pay a proportionate share of the

26 _____
27 ² The reporter's transcript has two sets of page numbers on each page, one set at the bottom of each page,
28 and another on the right side of each page. The numbers indicated on the right side of the page are used
herein for reference.

1 expert costs based on 2011-2012 pumping. Those costs would be taxable against other parties
2 depending on the outcome of the case.

3 At the hearing on expert witness costs, the court indicated that the intent was for public water
4 suppliers to “front” costs with the costs being *taxable* against all other parties because they were the
5 only parties named by the Wood Class at that time. (RT, 51:5-8.) Circumstances have changed since
6 November, and the Wood Class has now named the landowners in *Wood v. A.V. Material*. All parties
7 named by the Wood Class should pay proportionately if the add-on motion is granted.³

8 The November 9, 2012 Reporter’s Transcript states in part:

9 “The Court: Okay. And your view is that the difficulty is the Landowner Group?

10 “Mr. McLachlan: Yeah. I think so. I’ve broached the lead counsel the idea of
11 look, you know our number. Let’s just agree to it and get us out. And there’s essentially
12 very little interest in it. And if I have the court-appointed expert---to be blunt, *I’m*
13 *probably going to threaten to file a class case against them in order to get it accomplished,*
14 *because that’s what it’s going to take.* And I think it’s unfortunate, but that’s where we
15 are.

14 “The Court: Right now, your complaints and the class complaint is against the
15 public water suppliers; is that true?

16 “Mr. McLachlan: That’s right. Only them.

17 “The Court: Only them.

18 “Mr. McLachlan: Right.

19 “The Court: And I understand how that came about and it was a very sensible
20 thing to do.” And as a matter of fact, the court appreciates you having done that. Well, I
21 am going to need either a stipulation of agreement between the parties. I asked you what
22 the Wood class pumping is and has been; or I’m going to need an expert to testify to it.
23 And if there’s not going to be an agreement, then I’m taking that at face value. Then I’m
24 going to make the appointment of Mr. Thompson as he has requested—you have requested
25 I should say—and provided his proposal. And I think that the top dollar that he is going to
26 be entitled to, by his offer, is about \$80,000. That has to be paid. The court’s expert, I’m

25 ³ Costs should be taxable such that when the Wood Class’ pumping is known, the Wood Class would also
26 be responsible.

1 going to appoint him and his firm. Entrix, I believe, is the firm. And I'm going to order
2 that the public water providers who have prescriptive claims be responsible among
themselves for the reimbursement or payment of that amount of \$80,000.

3 "That is going to be a *taxable* amount, so that it could become a cost that is
4 allocated to other parties in this lawsuit depending on the outcome of the this lawsuit. But
the \$80,000 will be advanced by the Public Water Providers. That's the Order."
5 (November 9, 2012 Reporter's Transcript, 48:20-50:10, emphasis added.)

6 **C. WHEN THE ORDER WAS ENTERED, THERE WAS NOT YET A**
7 **DETERMINATION OF PUMPING THAT COULD BE USED TO ALLOCATE A**
8 **PROPORTION OF COSTS; NOW THAT GROUNDWATER PUMPING FOR 2011-**
9 **2012 HAS BEEN DETERMINED, IT CAN BE USED TO CALCULATE A MORE**
10 **EQUITABLE DISTRIBUTION OF EXPERT COSTS.**

11 At the time the Order at issue was entered, the Phase IV trial had not yet occurred, and there was
12 no undisputed way of calculating each party's share of the court-appointed expert costs based on
13 groundwater pumping. Now that the Phase IV trial is complete, and each parties' 2011-2012 groundwater
14 pumping is set forth in the Second Amended [Proposed] Statement of Decision, the [Proposed] Statement
15 can be used to determinate a more fair and equitable proportionate break-down .

16 If each of only ten parties split equally a bill that may exceed \$79,000,⁴ this is a hardship for
17 small water districts such as Desert Lake Community Services District and North Edwards Water
18 District. (Kostopoulos Declaration, ¶¶ 2-4.) Now that the Phase IV trial is complete, and each parties'
19 2011-2012 groundwater pumping is set forth in the Second Amended [Proposed] Statement of Decision,
20 the [Proposed] Statement can be used to determinate a more fair and equitable break-down among all
21 non-federal public water supplier and landowner parties, or at the very least proportionally as between
22 the public water suppliers with the right to recover costs from others. Should the court grant this
23 motion, Moving Parties could circulate a proposed order within five court days specifying the

24 ⁴ The ten PWS parties subject to the order re: court-appointed exert costs were: Rosamond
25 Community Services District, Los Angeles County Waterworks District No. 40, Littlerock Creek
26 Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake
Community Services District, California Water Service Company, Quartz Hill Water District, the
Palmdale Water District, and Phelan Pinon Hills Community Services District.

1 percentage share of each paying non-federal PWS and landowner party listed in the Second Amended
2 Phase 4 Statement of Decision based on 2011-2012 pumping.

3
4 **D. INVOICES FROM JANUARY THROUGH MARCH WERE NOT FOWARDED TO**
5 **PWS PARTIES UNTIL JUNE; THE BILLS WERE NOT SUBMITTED TO THE**
6 **COURT PRIOR TO A DEMAND FOR PAYMENT; BILLS SHOULD BE**
7 **FORWARDED TO THE COURT PROMPTLY FOR IN CAMERA REVIEW.**

8 In the past, there was a delay in notifying PWS parties that bills had arrived, in some cases, a
9 delay of several months. The invoices supplied by Cardno-Entrix are dated January, February and
10 March of 2013, but they were not forwarded to PWS parties for payment until June of 2013, with no
11 prior court review of the bills and only 15 days to pay. Each bill should be sent to the court for in
12 camera review and approval. The court recently issued a minute order indicating the bills must be
13 forwarded to the Court. Further, bills should be forwarded to the Court more promptly--within ten (10)
14 days of receipt--so that the paying parties, in turn, receive notice of the bills more promptly from
15 Cardno-Entrix. An amended order should reflect this.

16 Respectfully submitted,

17 DATED: July 19, 2013

18 LEMIEUX & O'NEILL

19 By: 

20 W. KEITH LEMIEUX

21 Attorneys for Littlerock Creek Irrigation District, Palm
22 Ranch Irrigation District, North Edwards Water District,
23 Desert Lake Community Services District
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I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is 4165 E. Thousand Oaks Blvd., Suite 350, Westlake Village, California 91362.

**REPLY TO OPPOSITIONS TO MOTION FOR AN ORDER CLARIFYING AND MODIFYING
THE ORDER RE: MOTION FOR AN ORDER AUTHORIZING COURT-APPOINTED EXPERT
WORK ENTERED DECEMBER 11, 2012**

I am readily familiar with the business practice for collection and processing of pleadings and discovery for electronic service with <http://www.scefilong.org>, and that the pleadings and discovery shall be electronically served this same day in the ordinary course of business.

Executed on July 19, 2013, in Westlake Village, California.

LC-PR\POS.Website.doc