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Attorneys for Defendant/Cross-Complainant and  
Cross-Defendant CITY OF LANCASTER

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

**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. BC325201;

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

Wm. 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  
Nos. 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

**OPPOSITION OF CITY OF  
LANCASTER TO ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION'S EX PARTE  
APPLICATION**

**DATE:** June 11, 2008  
**TIME:** 8:15 a.m.  
**DEPT:** 17

Trial Date: October 6, 2008

1 **I. THE EX PARTE RELIEF SHOULD BE DENIED.**

2 The City of Lancaster ("Lancaster"), joined by the City of Palmdale, Littlerock Creek  
3 Irrigation District, Palmdale Ranch Irrigation District, Desert Lake Community Services District,  
4 North Edwards Water District, Rosemond Community Services District, Los Angeles County  
5 Waterworks District No. 40, Llano Del Rio Water Company, Llano Mutual Water Company, Big  
6 Rock Mutual Water Company, Little Baldy Water Company, Palmdale Water District, Quartz Hill  
7 Water District, and California Water Service Company, oppose the Ex Parte Application of Antelope  
8 Valley Groundwater Agreement Association ("AVGAA") for "Relief from Expert Disclosure  
9 Deadline" for the following reasons:<sup>1</sup>

10  
11 1. The Ex Parte Application fails to comply with the requirements of California Rules  
12 of Court, rule 3.1202(c), which requires a showing of irreparable harm, immediate danger, or  
13 other statutory basis for granting relief ex parte.

14  
15 2. The Ex Parte Application is a disguised attempt to bring a motion for  
16 reconsideration. The Ex Parte Application, however, fails to assert any "new or different facts,  
17 circumstances or law."

18  
19 3. The Ex Parte Application improperly seeks ex parte relief on behalf of third parties.

20  
21 4. There is no reason to delay the trial to allow other parties to obtain experts, as (i) the  
22 trial court has discretion to limit the number of experts, including one expert per side, and (ii) a  
23 representative of AVGAA (Mr. Nebeker) purports to be an expert, and has been actively involved in  
24 the case, including actively participating in the Technical Committee meetings.

25  
26  
27 <sup>1</sup> Counsel for Lancaster is not available for the June 11, 2008 ex parte hearing, but joins oral argument of other counsel  
28 listed in this introductory paragraph.

1           5.       AVGAA complains that it needs time to conduct discovery, yet it has failed to serve  
2 any discovery and has provided no indication as to if/when it ever will.

3  
4           AVGAA has accused the “Public Water Suppliers” on many occasions of delay. Yet, each  
5 time the Public Water Suppliers attempt to advance the case, it is met with strong resistance from  
6 AVGAA. There is now almost full agreement among the parties that the issues now set for the next  
7 phase of trial need to be tried now, as a determination of the Basin, yield, overdraft and related issues  
8 is critical to both any final judgment, as well as the cornerstone of any negotiated settlement. An  
9 October 6, 2008 trial date will afford the parties sufficient time to prepare. The requested relief should  
10 therefore be denied.

11  
12       **II.   THE EX PARTE APPLICATION FAILS TO COMPLY WITH THE**  
13       **REQUIREMENTS OF CALIFORNIA RULES OF COURT, RULE 3.1202(c).**

14           Some ten days after this Court set the October 6, 2008 trial date, AGVAA, late on the  
15 afternoon of Friday, June 6, 2008, filed its Ex Parte Application for “Relief From Expert Disclosure.”  
16 Whether by design or error, the caption of the Ex Parte Application is misleading, as the relief sought  
17 by AGVAA is not only for relief from the June 27, 2008 expert disclosure deadline, but also to vacate  
18 the October 6, 2008 trial date.

19  
20           California Rules of Court, rule 3.1202(c) provides that an affirmative factual showing is  
21 required before Ex Parte relief may be granted:

22  
23           “An applicant must make an affirmative factual showing in a declaration containing  
24 competent testimony of personal knowledge of irreparable harm, immediate danger,  
25 or any other statutory basis for granting relief ex parte.”

26  
27           Nowhere in the Declaration of Michael Fife is there any evidence of “irreparable harm” or  
28 “immediate danger,” or any explanation as to why AGVAA waited ten days in which to bring this

1 Ex Parte Application following the setting of the October 6, 2008 trial date. The only discussion of  
2 “irreparable harm” is contained in paragraph 6 of Mr. Fife’s declaration, wherein he contends that  
3 the “Small Pumpers Class” will not be able to meaningfully participate in the next phase of trial. This  
4 argument, however, was previously considered and rejected by the Court. There are no new facts or  
5 circumstances warranting ex parte relief.

6  
7 **III. THE EX PARTE APPLICATION SHOULD BE DENIED BECAUSE IT IS AN**  
8 **IMPROPER ATTEMPT TO SEEK RECONSIDERATION.**

9 Motions for reconsideration are governed by Code of Civil Procedure section 1008. Pursuant  
10 to Code of Civil Procedure section 1008, a motion for reconsideration must be: (1) brought before the  
11 same judge that made the order being challenged, (2) made within ten days after service upon the  
12 party of a notice of entry of the order, (3) based upon “new or different facts, circumstances or law,”  
13 and (4) supported by a declaration stating the previous order, by which judge it was made, and the  
14 new or different facts, circumstances or law claimed to exist. The name of the motion is not  
15 controlling. The above requirements apply to any motion that asks the court to decide the same matter  
16 previously ruled on. (*See Curtin v. Koskey*, 231 Cal.App.3d 873, 878 (1991); *R & B Auto Center, Inc.*  
17 *v. Farmer’s Group, Inc.*, 140 Cal.App.4th 327, 373 (2006).)

18  
19 At the Case Management Conference on May 5, 2008, the Court set a Continued Case  
20 Management Conference on May 22, 2008, and requested the parties to submit Case Management  
21 Conference Statements with proposed suggestions for trial dates and phasing. AGVAA actively  
22 participated in this process and, after consideration of all the arguments and positions of the  
23 respective parties, the Court set the next phase of trial on October 6, 2008. Nowhere in AGVAA’s  
24 Ex Parte Application does it describe any new or different facts, circumstances or law. The Ex Parte  
25 Application must therefore be denied, as AGVAA failed to make the requisite showing required of  
26 Code of Civil Procedure section 1008.

1 **IV. THE EX PARTE APPLICATION IMPROPERLY SEEKS RELIEF ON BEHALF OF**  
2 **OTHER PARTIES.**

3 Beginning on page 3, line 24 through page 5, line 16, the Ex Parte Application, AGVAA  
4 concedes it is “raising issues concerning the rights of other local landowners” and those of the “Small  
5 Pumpers Class.” The Ex Parte Application should therefore be denied on this basis alone, as AGVAA  
6 lacks standing to assert or enforce rights of a third party. (*See Cornelius v. Los Angeles County*  
7 *Metropolitan Transportation Authority*, 49 Cal.App.4th 1761, 1771 (1996).)  
8

9 As this Court previously concluded, neither AGVAA nor the Small Pumpers Class will be  
10 prejudiced by proceeding with the October 6, 2008 trial. With no less than 14 experts representing the  
11 various competing claims in this litigation, including Mr. Nebeker of AGVAA, there will be no  
12 shortage of expert witness analysis at the next phase of trial. AGVAA’s ex parte attempt to continue  
13 the trial date, based upon alleged rights of third parties, should be rejected.  
14

15 **V. AGVAA HAS AND CONTINUES TO HAVE AMPLE OPPORTUNITY TO**  
16 **CONDUCT DISCOVERY.**

17 Beginning on page 7, line 9 of its Ex Parte Application, AGVAA asserts that it has been  
18 unable to prepare for trial “due to the stay on discovery.” Oddly, AGVAA has yet to propound  
19 discovery or, for that matter, even suggest in its Ex Parte Application, when or if it will conduct or  
20 commence any discovery. This smokescreen tactic, asserted for the sole purpose of delay, should be  
21 rejected.  
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1 **VI. CONCLUSION.**

2 The current schedule gives all parties sufficient time to conduct discovery and prepare for  
3 trial. The current procedures in place protect all landowners in the Basin, including those that may  
4 not be parties at this time. For the foregoing reasons and authorities, the Ex Parte Application of  
5 AGVAA should be denied.

6  
7 DATED: June 10, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

8  
9 By: 

Douglas J. Evertz, Attorneys for Defendant/  
Cross-Complainant and Cross-Defendant  
CITY OF LANCASTER

1 **PROOF OF SERVICE**

2 **ANTELOPE VALLEY GROUNDWATER CASES**

Judicial Council Coordination, Proceeding No. 4408

3 Santa Clara Case No. 1-05-CV 049053

4 Assigned to the Honorable Jack Komar

5 Los Angeles County Superior Court, Central, Dept. 1

6 I am a resident of the State of California, over 18 years of age and not a party to this action. I  
7 am employed in the County of Orange, State of California. My business address is 2050 Main Street,  
8 Suite 600, Irvine, California 92614. On June 10, 2008, I served the within document(s):

9 **OPPOSITION OF CITY OF LANCASTER TO ANTELOPE VALLEY**  
10 **GROUNDWATER AGREEMENT ASSOCIATION'S EX PARTE APPLICATION**



by posting the document(s) listed above to the website <http://www.scefiling.org>, a  
dedicated link to the Antelope Valley Groundwater Cases; Santa Clara Case  
No. 1-05-CV 049053, Assigned to the Honorable Jack Komar, said document(s) is  
electronically served/distributed therewith.



By transmitting via e-mail the document(s) listed above to the e-mail address(es) and/or  
fax number(s) set forth below on this date.



14 by placing the document(s) listed above in a sealed Overnight Express envelope/package for  
overnight delivery at Irvine, California addressed as set forth below.



16 by causing personal delivery by Nationwide Legal of the document(s) listed above, to the  
person(s) at the address(es) set forth below.

17  
18 I am readily familiar with Luce, Forward, Hamilton & Scripps LLP's practice for collecting and  
19 processing correspondence for mailing. Under that practice it would be deposited with the U.S.  
20 Postal Service on the same day that the correspondence is placed for collection and mailing, it is  
deposited in the ordinary course of business with the United States Postal Service, in a sealed  
envelope with postage fully prepaid.

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

23 Executed on June 10, 2008, at Irvine, California.

24   
25 LORIN MORENO  
26  
27  
28