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Government Code § 6103

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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

CLASS ACTION

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

**OPPOSITION OF CITY OF
LANCASTER AND CITY OF
PALMDALE TO RICHARD WOOD'S
MOTION FOR ORDER ALLOCATING
COSTS OF COURT-APPOINTED
EXPERT WITNESS**

DATE: June 5, 2009
TIME: 2:00 p
DEPT: 17C

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1 **I. INTRODUCTION.**

2 The City of Lancaster (“Lancaster”) and the City of Palmdale (“Palmdale”) (collectively,
3 “Cities”) oppose Richard Wood’s Motion for Order Allocating Costs of Court-Appointed Expert
4 Witness (“Motion”) for the following reasons:

- 5 • Contrary to the Motion, the Public Water Suppliers did not collectively stipulate to
6 “lifting the stay to allow for the [court appointed] expert’s service to conduct
7 data-gathering and field services in connection with water usage by small groundwater
8 pumpers within the area of adjudication.” (Motion, 3:13-16.) The Stipulation and
9 Order referenced in the Motion are only binding upon the parties to the Stipulation
10 and Order, *i.e.*, Richard Wood on the one hand, and Los Angeles County Waterworks
11 District No. 40 and Rosamond Community Services District, on the other.
- 12 • The Motion is ambiguous as to the Cities as it seeks “an order apportioning the costs
13 of the court-appointed expert among the Public Water Suppliers” (which includes
14 the Cities within its definition), yet the Motion seeks to allocate the costs of the
15 experts “equal or proportionate to their current respective pumping volumes.”
16 Palmdale has no production and Lancaster’s production is limited to a relatively small
17 amount as an overlying user. It is therefore unclear whether the Motion requests the
18 Cities to contribute to the costs of the expert. To the extent it does, the Cities oppose
19 the Motion and object to any costs of the expert being apportioned to them.
- 20 • If the court goes beyond the agreement of the parties to the Stipulation and requires
21 others to contribute to the costs of the court-appointed expert, fees should be allocated
22 to all parties consistent with the requirements of Evidence Code section 731(c).

23 **II. THE CITIES DO NOT CLAIM PRESCRIPTIVE WATER RIGHTS ADVERSE TO**
24 **THE SMALL PUMPERS CLASS.**

25 The Motion discloses that class representative Richard Wood is not aware of the relationship
26 of the Cities *vis-a-vis* the other Public Water Suppliers. While the other Public Water Suppliers
27 produce water for retail uses, and presumably claim prescriptive rights against the small pumpers
28

1 class, the Cities do not. Lancaster only claims rights as an overlying owner and/or through its
2 recycled water program. Palmdale produces no water.

3 The Cities did join as Public Water Suppliers identified in what has been generally referred to
4 as the First Amended Cross-Complaint of the Public Water Suppliers filed January of 2007.
5 However, on September 18, 2008, Lancaster dismissed (as to it only), its first cause of action for
6 prescription as alleged in the First Amended Complaint filed by the Public Water Suppliers.
7 Palmdale likewise dismissed its first cause of action on August 6, 2008. The Cities, however, remain
8 parties to the First Amended Cross-Complaint, as they both seek an equitable physical solution in this
9 consolidated adjudication.

10 **III. THE CITIES ARE NOT PARTIES TO THE MAY 6, 2009 WOOD STIPULATION.**

11 The May 6, 2009 “Stipulation and Order re Small Pumpers Class” is between Richard Wood,
12 individually and class representative on one hand, and Los Angeles County Waterworks District
13 No. 40 and Rosemond Communities Services District on the other, *i.e.*, the parties who are working
14 together to determine who should receive Class notice. The Cities are not part of that process, are in
15 no way funding the service of Class notice, and contrary to the assertions of the Motion, did not
16 stipulate to lifting the stay to employ a court-appointed expert who will purportedly assist in refining
17 the list of those who will receive Class notice.

18 Because the Cities are not participating in the preparation of the mailing list and service of
19 Class notice and because the stipulation is not binding on the Cities, the Motion should be denied as to
20 the Cities.

21 **IV. THE MOTION PURPORTS TO EXEMPT THE CITIES FROM THE PROPOSED**
22 **COST ALLOCATION.**

23 The Motion is internally inconsistent as applied to the Cities. The Motion purports to
24 apportion costs of the court-appointed expert between the Public Water Suppliers, which the Motion
25 defines to include the Cities. The Motion then seeks to specifically apportion costs based upon
26 respective pumping volumes. Palmdale, as indicated above, while an overlyer, produces no water.
27 Lancaster produces only relatively a small amount as an overlying owner, *i.e.*, Lancaster is an overlyer
28 public entity in the same fashion as the State of California, which is not a target of the Motion.

1 V. IF THE COURT APPORTIONS COSTS OF THE COURT-APPOINTED EXPERT AT
2 THIS TIME, SUCH COSTS SHOULD BE EQUALLY APPORTIONED TO ALL
3 PARTIES BASED UPON PUMPING.

4 Evidence Code section 731(c) provides the costs of the court-appointed expert “be apportioned
5 and charged to the several parties.” Evidence Code section 731(c) necessarily implies costs of the
6 court’s expert be borne by all parties to the adjudication -- not simply those who have been given the
7 title of “Public Water Supplier.”

8 The Motion argues against such equitable allocation contending that only the defined Public
9 Water Suppliers are parties to the Wood Action. If the Court is inclined to allocate the costs of the
10 court-appointed expert at this stage of the proceedings, the Cities request the Court to continue the
11 Motion until such time as a motion may be brought to coordinate the Wood Complaint with the other
12 coordinated proceedings. Following coordination, the Court will be in a position to apportion the
13 costs of any court-appointed expert among all producers consistent with Evidence Code
14 section 731(c).

15
16 DATED: May 21, 2009

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

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18 By: 

Douglas J. Evertz, Attorneys for
CITY OF LANCASTER

19
20
21 DATED: May 21, 2009

RICHARDS, WATSON & GERSHON

22
23 By: 

James M. Markman
Steven R. Orr, Attorneys for
CITY OF PALMDALE

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,
Suite 600, Irvine, California 92614. On May 22, 2009, I served the within document(s):

8 **OPPOSITION OF CITY OF LANCASTER AND CITY OF PALMDALE TO**
9 **RICHARD WOOD'S MOTION ORDER ALLOCATING COSTS**
10 **OF COURT-APPOINTED EXPERT WITNESS**



by posting the document(s) listed above to the website <http://www.scefilng.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.



by placing the document(s) listed above in a sealed Overnite 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 May 22, 2009, at Irvine, California.

24 
25 LORIN MORENO
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