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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

**REPLY OF MOVING PARTIES IN
 SUPPORT OF MOTION TO STAY
 PROCEEDINGS FOR SIX MONTHS, OR,
 IN THE ALTERNATIVE, CONTINUE
 TRIAL SETTING CONFERENCE;
 DECLARATION OF DOUGLAS J.
 EVERTZ IN SUPPORT THEREOF**

DATE: August 17, 2009
TIME: 10:00 a.m.
DEPT: San Jose Sup. Ct., Dept. 17C

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I. INTRODUCTION.

This motion to stay is brought by the Moving Parties, who represent a wide cross-section of competing interests, including a municipality, a public water supplier, a wholesaler of water, a water banking operation, large and small agricultural interests, mutual water companies, and industrial users. Opposing the requested stay are the federal government and Los Angeles County Waterworks District No. 40 (both of whom apparently have endless financial resources to prosecute the case) and the Willis class (whose counsel presumably will ask the Court to be reimbursed by District 40 and others).¹ The Opposition briefs argue:

- Even if a settlement is reached, it will not obviate the need for “a” trial.
- The principals only process is flawed because it is purportedly moving forward without participation of key experts and party representatives.
- The principals only settlement process can move forward without a stay, as settlement is more likely with a looming trial date.

Each of these positions is misguided and flawed. In addition to the motion to stay, there are now seven other substantive motions scheduled for hearing on August 17. If history is any guide, this pattern will continue with increasing frequency. Before embarking on this expensive path, the Moving Parties request an opportunity to craft a physical solution without incurring mounting legal fees.

II. A NEGOTIATED SETTLEMENT WILL SIGNIFICANTLY REDUCE THE TIME AND EXPENSE OF A MULTI-PHASED TRIAL EXTENDING OVER SEVERAL YEARS.

District 40 argues that a negotiated physical solution will not obviate the need for a trial, as there will likely be “holdouts” who will not agree to be bound by a stipulated judgment. District 40 cites *City of Barstow v. Mojave Water Agency*, 23 Cal. 4th 1224 (2000) for this proposition. District 40’s argument misses the mark. In *City of Barstow*, a group of attorneys and engineers

¹ The motion to stay is also opposed by the Woods class, but on the grounds that a third-party mediator should participate in the “principals only” process and that class counsel should be permitted to participate in the process. As explained below, the principals are receptive to both concepts and will be discussing them at a principals meeting to be held on August 12, 2009. (Evertz Dec., ¶ 3.)

(including counsel for Lancaster, District 40, Palmdale Water District, AVEK and Sheep Creek Water Company) negotiated a stipulated judgment that was signed by the vast majority of the parties. A *single* trial was then held over the course of several weeks whereby a selected group of attorneys tried the case on behalf of all of the stipulating parties against a handful of parties who refused to stipulate. In the *City of Barstow* litigation, a single and relatively short trial was needed to bring the trial proceedings to a final conclusion. (Evertz Dec., ¶ 4.) The principals fully understand a trial of some type will be required if some parties do not stipulate.

Here, and absent a stipulated judgment, this case will in all probability be litigated in multiple phases over a number of years -- all the while, the Basin will be left unmanaged and the parties will continue to incur ever mounting expenses. With the exception of those parties with deep pockets opposing the motion to stay, this is not an attractive alternative.

III. ALL KEY INTERESTS (WITH THE EXCEPTION OF DISTRICT 40 WHO RECENTLY WITHDREW) ARE REPRESENTED IN THE PRINCIPAL ONLY DISCUSSIONS.

District 40 argues on page 3 of its brief the United States is not participating in the principal discussions and that a workable physical solution cannot be crafted without the participation of the federal government. In support of this proposition, the declaration accompanying District 40's opposition states at paragraph 6 that "I also am informed based on my conversations with those having knowledge of the 'principals-only' meetings, and on that basis believe, that the United States also is not participating in the 'principals-only' meetings." District 40's "beliefs," which are based upon unidentified individuals, are wrong. Representatives of the federal government have attended the principal only meetings, most recently by the Chief of the Technical Management Division of Edwards Air Force Base -- a person who also happens to be a professional engineer. (Evertz Dec., ¶ 1.)

District 40 also states that "class counsel have been excluded from the meetings." Both class counsel have recently been invited to participate and counsel for the Woods class has formally expressed a willingness to attend upon obtaining appropriate consents. As of the filing of this reply brief, only the City of Palmdale has formally objected to class counsel participating in the principal

only meetings. At the principals meeting to be held August 12, 2009, the principals will be discussing means by which the objections of the City of Palmdale can be addressed so as to allow class counsel participation. (Evertz Dec., ¶ 3.)

Finally, District 40 argues on page 3 of its opposition that it is the lawyers who are “best equipped to structure a settlement” and left to their own devices, the principals may craft a settlement that fails to comply with Article X, section 2 of the California Constitution. This argument ignores two points. First, while engineering experts retained for the purposes of litigation are not participating in the principals only process, staff engineers and other principals with technical backgrounds are participating. (Evertz Dec., ¶ 2.) Second, and as set forth in paragraph 3 of the declaration of James R. Williams filed in support of the motion to stay, the principals fully intend to engage and utilize the services of legal counsel to draft a proposed stipulated judgment.

IV. EFFECTIVE SETTLEMENT NEGOTIATIONS MANDATE A STAY.

The federal government, District 40 and the Willis class argue a pending trial date will encourage/force settlement discussions and, as the Willis class puts it, “many cases settle on the courthouse steps.” It is naive to argue a complex water rights case such as this with multiple parties and issues can quickly and efficiently be settled on the courthouse steps. As was the case in the *City of Barstow* litigation, it took months for the parties to craft a workable solution. The trial court recognized settlement efforts would not be successful if the parties were required to simultaneously participate in pre-trial discovery, trial preparation and trial. The trial court accordingly imposed a stay of the litigation to allow the settlement negotiations to run their course. (Evertz Dec., ¶ 4.) The process worked in the *City of Barstow* litigation and the Moving Parties request this Court afford them an opportunity to allow a similar process to work in this proceeding.

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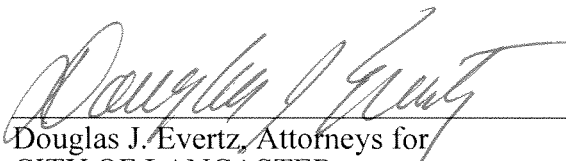
V. CONCLUSION.

This litigation has been pending in some form for over 10 years. The last six months, principals representing virtually all of the competing interests in this case have been meeting and are uniformly optimistic the process may result in a negotiated settlement. The Moving Parties therefore request that the Court give this process an opportunity to work without incurring further fees and expenses associated with continued litigation. The Moving Parties respectfully request the Motion to Stay be granted.

DATED: August 10, 2009

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By:


Douglas J. Evertz, Attorneys for
CITY OF LANCASTER

DECLARATION OF DOUGLAS J. EVERTZ

I, Douglas J. Evertz, declare as follows:

I am an attorney at law, duly licensed to practice law before all the courts of the State of California and am a partner with the law firm of Luce, Forward Hamilton and Scripps, LLP, counsel for the City of Lancaster in this proceeding. This Declaration is made in support of the Reply in support of the Motion to Stay. I have personal knowledge of the facts set forth below, and if called as a witness, I could and would testify to the following:

1. The declaration submitted by District 40 in opposition to the motion to stay states in paragraph 6 that "I am informed based on my conversations with those having knowledge of the "principals-only" meetings, and on that basis believe, that the United States is not participating in the "principals-only" meetings." Different representatives of Edwards Air Force Base have participated in the principal only discussions over time. James R. Williams, who is the principal representative of the City of Lancaster, has attended most of the principal meetings and has confirmed that most recently, Amy Frost, who is Chief of the Technical Management Division of Edwards Air Force Base, has attended the recent principals meetings and that she is a professional engineer.

2. While experts retained by the parties for the purposes of litigation are not participating in the principals only process, many individuals/principals with experience in the field of water resources are participating, including civil engineers.


3. The next meeting of the principals is scheduled for August 12, 2009. Counsel for both the Willis class and Woods class were invited to attend the meeting. I have spoken with Michael McLachlan, counsel for the Woods class, and he expressed a willingness to participate in the principals meetings, including the meeting of August 12, 2009, upon receiving appropriate consents. As of the signing of this declaration, the only party of which I am aware formally opposes Mr. McLachlan's attendance at the principals only meetings is the City of Palmdale. At the meeting to be held on August 12, 2009, the principals intend to discuss means by which the objections of the City of Palmdale can be addressed so as to allow class counsel participation.

4. I was one of the attorneys representing the City of Barstow and the Southern California Water Company in the Mojave River Adjudication and was a member of both the

“Drafting Committee” and trial team for the stipulating parties. In that proceeding, the trial court imposed a stay of the litigation so as to allow the Drafting Committee (consisting of a diverse group of attorneys and engineers) to draft a physical solution/stipulated judgment. A single trial was then held to try the case against the non-stipulating parties. This single trial resulted in a final judgment. In my opinion, the process, including the stay, ultimately “fast tracked” the proceedings.

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

Executed on this 10th day of August, 2009 at Irvine, California.


DOUGLAS J. EVERTZ

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES

Judicial Council Coordination, Proceeding No. 4408

Santa Clara Case No. 1-05-CV 049053

Assigned to the Honorable Jack Komar

Los Angeles County Superior Court, Central, Dept. 1

I am a resident of the State of California, over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 2050 Main Street, Suite 600, Irvine, California 92614. On August 10, 2009, I served the within document(s):

REPLY OF MOVING PARTIES IN SUPPORT OF MOTION TO STAY PROCEEDINGS FOR SIX MONTHS, OR, IN THE ALTERNATIVE, CONTINUE TRIAL SETTING CONFERENCE; DECLARATION OF DOUGLAS J. EVERTZ IN SUPPORT THEREOF

☒ 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.

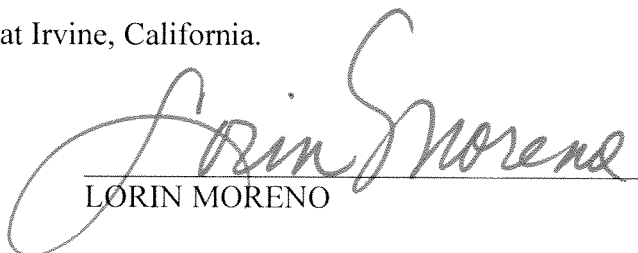
☐ by placing the document(s) listed above in a sealed Overnight Express envelope/package for overnight delivery at Irvine, California addressed as set forth below.

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

I am readily familiar with Luce, Forward, Hamilton & Scripps LLP's practice for collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. 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.

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

Executed on August 10, 2009, at Irvine, California.


LORIN MORENO