

**BEST BEST & KRIEGER LLP**

ERIC L. GARNER, Bar No. 130665

JEFFREY V. DUNN, Bar No. 131926

STEFANIE D. HEDLUND, Bar No. 239787

5 PARK PLAZA, SUITE 1500

IRVINE, CALIFORNIA 92614

TELEPHONE: (949) 263-2600

TELECOPIER: (949) 260-0972

Attorneys for Defendants

ROSAMOND COMMUNITY SERVICES

DISTRICT and LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

**OFFICE OF COUNTY COUNSEL**

**COUNTY OF LOS ANGELES**

RAYMOND G. FORTNER, JR., Bar No. 42230

COUNTY COUNSEL

MICHAEL L. MOORE, Bar No. 175599

SENIOR DEPUTY COUNTY COUNSEL

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

TELEPHONE: (213) 974-8407

TELECOPIER: (213) 687-7337

Attorneys for Defendant LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

[See Next Page For Additional Counsel]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

**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. BC 325201;

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, Case Nos.  
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

**CLASS ACTION**

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

**PUBLIC WATER SUPPLIERS' OPPOSITION TO  
RICHARD WOOD, REBECCA WILLIS AND  
CLASS MOTIONS FOR APPOINTMENT OF  
EXPERT WITNESSES**

Date: April 24, 2009

Time: 9:00 a.m.

Dept.: 1

1 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

2 Douglas J. Evertz, Bar No. 123066  
3 2050 Main Street, Suite 600  
4 Irvine, CA 92614  
(949) 737-3700 (916) 251-5830 fax  
Attorneys for City of Lancaster

5 RICHARDS WATSON & GERSHON

6 James L. Markman, Bar No. 43536  
7 Steven Orr, Bar No. 136615  
8 355 S. Grand Avenue, 40<sup>th</sup> Floor  
Los Angeles, CA 90071-3101  
(213) 626-8484 (213) 626-0078 fax  
Attorneys for City of Palmdale

9 LEMIEUX & O'NEILL

10 Wayne Lemieux, Bar No. 43501  
11 2393 Townsgate Road, Ste. 201  
12 Westlake Village, CA 91361  
(805) 495-4770 (805) 495-2787 fax  
Attorneys for Littlerock Creek Irrigation District and  
Palm Ranch Irrigation District

13 LAGERLOF SENEAL GOSNEY & KRUSE

14 Thomas Bunn III, Bar No. 89502  
15 301 North Lake Avenue, 10<sup>th</sup> Floor  
Pasadena, CA 91101-4108  
(626) 793-9400 (626) 793-5900 fax  
Attorneys for Palmdale Water District

16 CHARLTON WEEKS LLP

17 Bradley T. Weeks, Bar No. 173745  
18 1007 West Avenue M-14, Suite A  
Palmdale, CA 93551  
(661) 265-0969 (661) 265-1650 fax  
Attorneys for Quartz Hill Water District

20 CALIFORNIA WATER SERVICE COMPANY

21 John Tootle, Bar No. 181822  
22 2632 West 237<sup>th</sup> Street  
Torrance, CA 90505  
(310) 257-1488; (310) 325-4605-fax

1     **I.     INTRODUCTION.**

2             The Wood Class has again filed its motion for appointment of an expert witness at the  
3     Public Water Suppliers expense. Before the Court denied the first Wood Class motion, the Willis  
4     Class too filed a motion for appointment of an expert witness also at the Public Water Suppliers  
5     expense. As with the previous motion, both motions should be denied for each of the following  
6     reasons:

- 7             • No neutral expert is necessary because the Court is capable of making its findings  
8                 on safe yield and overdraft after evaluating the evidence at trial;
- 9             • Court appointment of a neutral expert witness will further delay the proceedings  
10                 and will add unwarranted expense to the already substantial costs of these  
11                 proceedings;
- 12            • No authority provides for an order requiring a civil litigant to pay the adverse  
13                 party's expert witness fees pending resolution of the case;
- 14            • No evidence of "self-help" need come before the court until it first determines safe  
15                 yield and overdraft;
- 16            • Class members' alleged "self-help" – the primary basis for the motion – may not  
17                 be the proper subject of expert witness testimony in this proceeding;
- 18            • The Willis Class attorneys have already retained expert witnesses, and the Wood  
19                 Class attorneys may participate in joint efforts on the part of other private  
20                 landowner parties to coordinate their litigation strategy and share expert witness  
21                 information concerning safe yield and overdraft;
- 22            • The court will ultimately decide how all parties – including private landowner  
23                 parties – will present expert witness testimony at trial so as to avoid cumulative  
24                 and unduly time-consuming testimony.

25  
26     **II.    THE COURT IS CAPABLE OF MAKING FINDINGS ON SAFE YIELD AND**  
27     **OVERDRAFT WITHOUT A NEUTRAL EXPERT.**

28             No party has made a showing that the Court requires an expert witness in order to make

findings on Basin safe yield and overdraft. For years, the Court has heard various matters in these proceedings without a neutral expert or indicating that a neutral expert would be necessary. The Court made findings on safe yield and overdraft in another groundwater adjudication and did so without a neutral expert. Court appointment of a neutral expert witness will further delay the proceedings and will add unwarranted expense to the already substantial costs of these lengthy proceedings.

### **III. A CIVIL LITIGANT DOES NOT PAY THE ADVERSE PARTY'S EXPERT WITNESS COSTS PENDING RESOLUTION OF THE CASE.**

There is no authority for ordering a civil litigant to pay the adverse party's expert witness costs pending resolution of the case. Although the motion relies upon Evidence Code section 730, it merely provides that the court may appoint an expert and "may fix the compensation . . . at the amount as seems reasonable to the court." Section 730 does *not* allow the court to impose expert witness costs upon the adverse party, and no case authority exists to require an adverse party to bear such expert witness costs pending case resolution.

"[E]xperts appointed under section 730 are necessary only when the court sees the need for an assessment by a disinterested and impartial expert who is not advocating on behalf of a party to the action." (*In re Eric A.* (1999) 73 Cal.App.4<sup>th</sup> 1390, 1394 fn. 4, citing *Mercury Casualty Co. v. Superior Court* (1986) 179 Cal.App.3d 1027, 1032, 1033.) Moreover, case law interpreting Section 730 holds it does *not* allow the court to appoint an expert for the use of only one party: "Section 730 . . . does not authorize the appointment of experts whose work will be kept confidential. Instead, it contemplates that any expert appointed will be available for either party to call and examine as a witness." (*People v. Angulo* (2005) 129 Cal.App.4<sup>th</sup> 303, 313-314 *modified, rehearing denied* Cal.App.LEXIS 755 (Cal.App.4<sup>th</sup> Dist., 2005.)

Moving parties' contention that defendant Public Water Suppliers agreement to pay class notice mailing costs should also mean they can be ordered to pay expert witness costs, is wrong. Public Water Suppliers agreed to bear such notice costs only to avoid further delays in the class notice process, and because plaintiff class notice costs can be imposed upon defendants. (Cal.

Rules of Ct., Rule 3.766.) Agreeing to pay class notice mailing costs, however, cannot be construed as an implied agreement to pay for the adverse class members' expert witness costs in their case against the defendant Public Water Suppliers; they have spent considerable sums of money on expert witness analysis of the Adjudication Area, and they do not have funds to pay an adverse party's expert.

**IV. COURT APPOINTMENT OF AN EXPERT WITNESS FOR  
SELF HELP WOULD BE PREMATURE.**

The primary basis for the motion is a purported need for an expert to analyze and present evidence of "self help." The Court has not yet set or otherwise scheduled a phase of trial concerning self-help. It does not become an issue until the court first determines safe yield and overdraft. Until those determinations are made, the parties will not have to analyze self-help issues and evidence.

**V. "SELF-HELP" IS NOT NECESSARILY THE PROPER SUBJECT OF EXPERT  
WITNESS TESTIMONY.**

The need to analyze self help data does not necessarily establish the need to retain an expert witness. "Self-help" is groundwater production during the prescriptive time period, and would require a showing that a particular landowner pumped groundwater in certain amounts during certain times for reasonable and beneficial use on the landowner's property. (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 293, fn. 101 citing *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 901, 931-933.) Self-help is a discovery issue before trial; and a factual issue at trial. To determine when, if ever, a private landowner pumped groundwater is a factual issue not necessarily "beyond common experience that the opinion of an expert would assist the trier of fact. . . ." (Evid. Code § 801(a).)

///

///

///

**VI. WOOD CLASS MEMBERS HAVE THE SAME INTERESTS  
AS OTHER PRIVATE LANDOWNER PARTIES AND THE  
WOOD CLASS ALREADY HAS ACCESS OR SHOULD HAVE  
ACCESS TO OTHER PRIVATE LANDOWNER PARTIES’  
EXPERT WITNESS OPINION AND ANALYSIS.**

As to issues of self help, safe yield and overdraft, the Willis and Wood Class members are like other overlying private landowners claiming superior rights as against the Public Water Suppliers. The Willis Class and other private landowner parties have retained expert witnesses who have participated in technical committee discussions and/or have otherwise been retained to provide expert witness opinions on these issues at trial. Additionally, Wood Class counsel participates or can participate with other private landowner party attorneys in developing case strategy that includes discovery, hearings, and trial. Their cooperation allows or should allow Wood Class counsel to evaluate expert witness analysis by other private landowner parties – much of it already shared in the Technical Committee process and now made publicly available to all parties as ordered by the Court.

**VII. THERE IS NO PROPER SHOWING THAT A NEUTRAL EXPERT IS  
NECESSARY AND THE COURT WILL DECIDE HOW MANY PARTY  
EXPERTS WILL TESTIFY AS TO SAFE YIELD AND OVERDRAFT SO AS TO  
AVOID CUMULATIVE AND UNDUE TIME-CONSUMING OPINION  
TESTIMONY.**

The real issue raised at least indirectly by both the Wood and Willis Class motions is how many private landowner party experts will testify at trial. Well-established California law allows the court to limit the number of expert witnesses who would testify to avoid cumulative evidence. (Evid. Code §§ 352 and 723.) Certainly, not every landowner party will present cumulative expert witness testimony on safe yield and overdraft, and the motions make no showing that additional expert witness testimony by a court-appointed expert is necessary.

///

**VIII. CLASS MEMBERS ARE THE PRIMARY BENEFICIARIES OF THEIR  
PLAINTIFFS' CLASS ACTIONS AGAINST THE PUBLIC WATER SUPPLIERS**


Moving parties may argue their respective plaintiff's class action lawsuits are of primary benefit to the Public Water Suppliers. The class mechanism, however, primarily benefits all class members as it allows them to prosecute their claims against the Public Water Suppliers and other landowners without having each landowner maintain an individual action. (*E.g., Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 807 ["If each (class member) is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all."]) Furthermore, the Public Water Suppliers seek a physical solution to the Adjudication Area's overdraft conditions, that solution will benefit all groundwater users including members of both classes.

**IX. CONCLUSION.**

For all the reasons herein, motions for appointment of an expert witness should be denied.

Dated: April 13, 2009

BEST BEST & KRIEGER LLP

By   
ERIC L. GARNER  
JEFFREY V. DUNN  
STEFANIE D. HEDLUND  
Attorneys for Defendants  
ROSAMOND COMMUNITY SERVICES  
DISTRICT and LOS ANGELES  
COUNTY WATERWORKS DISTRICT  
NO. 40

**PROOF OF SERVICE**

I, Lisa A. Wallace, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 400 Capitol Mall, Suite 1650, Sacramento, California 95814. On April 13, 2009, I served the within document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO RICHARD WOOD, REBECCA WILLIS AND CLASS' MOTIONS FOR APPOINTMENT OF EXPERT WITNESS**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.



by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

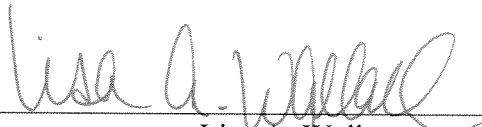


I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 13, 2009, Sacramento, California.

  
\_\_\_\_\_  
Lisa A. Wallace

SACRAMENTO\SHEDLUND\56986.1