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13 COUNTY WATERWORKS DISTRICT NO. 40

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

17
18 **ANTELOPE VALLEY**
19 **GROUNDWATER CASES**

20 **Included Actions:**

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

25 Los Angeles County Waterworks District
26 No. 40 v. Diamond Farming Co., Superior
27 Court of California, County of Kern, Case
28 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 AGWA'S MOTION IN
LIMINE NO. 2

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The self-designated “Antelope Valley Ground Water Agreement Association” (“AGWA”) moves this court for an order finding that the safe yield of the basin is subject to judicial redetermination pursuant to the court’s continuing jurisdiction, and, in the interest of judicial economy, to exclude any evidence presented by the parties during Phase III that would subvert this finding. For the reasons set forth below, this motion should be denied.

II. ARGUMENT

If granted, AGWA’s motion in limine number 2, would have this court to prematurely exclude or even consider evidence related to the issue of safe yield before it has been sufficiently developed. The court cannot properly rule on the admissibility of such evidence without understanding its relevance at trial. (*See, Kelly v. New West Federal Savings* (1996) 49 Cal. App. 4th 659, 671 [“[u]ntil the evidence is actually offered, and the court is aware of its relevance in context, its probative value, and its potential for prejudice, matters related to the state of the evidence at the time an objection is made, the court cannot intelligently rule on admissibility.”].) The court should have the benefit of all of the evidence presented at trial to make any necessary findings during the Phase III trial. The admissibility of such evidence can be decided then, and excluded, if necessary, upon proper objection.

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1 AGWA contends its motion is based upon judicial efficiency. While it is true that
2 motions in limine may minimize unnecessary presentations during trial, it is unclear how the
3 exclusion of evidence related to this discrete issue would make the court's safe yield and
4 overdraft determinations more efficient. Case law defines the legal concept of safe yield, and this
5 court can apply the appropriate law to make any necessary factual or legal determinations
6 required during trial. The court may also exercise its continuing jurisdiction to decide issues the
7 court deems appropriate, including that of safe yield, and a special ruling is not needed to invoke
8 the court's authority to do so. Thus, there is no cognizable legal justification for granting this
9 motion and it should be denied.

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12 Dated: December 14, 2010

BEST BEST & KRIEGER LLP

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15 By 

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PROOF OF SERVICE

I, Kerry V. Keefe, 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, 5 Park Plaza, Suite 1500, Irvine, California 92614. On December 14, 2010, I served the within document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO AGWA'S MOTION IN LIMINE
NO. 2**

- ☒ 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 December 14, 2010, at Irvine, California.


Kerry V. Keefe