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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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. 3

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In its Motion in Limine Number 3, the self-designated “Antelope Valley Ground Water
4 Agreement Association” (“AGWA”) seeks a ruling from this court stating that its continuing
5 jurisdiction to implement a physical solution (or a basin management program) is not conditioned
6 on a finding that the basin is in overdraft. More specifically, AGWA contends that the court may
7 exercise its ongoing jurisdiction to implement a physical solution in the absence of overdraft, and
8 asks that this court find the same, and exclude evidence from the Phase III trial that could
9 contradict AGWA’s requested finding. For the reasons set forth below, the motion be denied.

10 **II. ARGUMENT**

11 AGWA’s motion would require the court to prematurely exclude evidence relevant to
12 the implementation of a physical solution or basin management program. The relevancy of such
13 evidence, however, may not become known until its context is established during the trial. (*See,*
14 *Kelly v. New West Federal Savings* (1996) 49 Cal. App. 4th 659, 671 [“[u]ntil the evidence is
15 actually offered, and the court is aware of its relevance in context, its probative value, and its
16 potential for prejudice, matters related to the state of the evidence at the time an objection is
17 made, the court cannot intelligently rule on admissibility.”].) The court should consider all of the
18 evidence during trial and can disallow evidence not relevant upon proper objection at that time.

19 There is no legal justification for granting this motion now, and AGWA offers none. A
20 motion in limine lacking factual and legal support would ask the court to make evidentiary rulings
21 in an evidentiary vacuum, and thus, is improper and should be denied. (*C.f., Kelly v. New West*
22 *Fed. Sav.* (1996) 49 Cal.App.4th 659, 670.) Moreover, the motion improperly and prematurely
23 asks this court to decide a question of law, *viz.* the scope of the court’s continuing jurisdiction
24 relative to the implementation of a physical solution in the absence of overdraft, which is not an
25 appropriate use of this evidentiary device. (*C.f., Kelly v. New West Federal Savings* (1996) 49
26 Cal. App. 4th 659, 669.)

1 For all these reasons, this motion should be denied.

2
3
4 Dated: December 14, 2010

BEST BEST & KRIEGER LLP

5
6 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. 3**



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