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COUNTY WATERWORKS DISTRICT NO. 40

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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. 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 WOOD CLASS  
MOTION FOR ORDER AUTHORIZING  
COURT-APPOINTED EXPERT WITNESS  
WORK**

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**I. INTRODUCTION**

The Wood Class seek court approval for expert Timothy Thompson to proceed with work previously deemed unnecessary by this Court (in light of the status of the Adjudication and Settlement). Specifically, the Wood Class asks for Mr. Thompson to (1) gather evidence to assist the Wood Class claims that Wood Class members have exercised, and continue to exercise, overlying rights for reasonable and beneficial use.

The motion presupposes that a settlement cannot be reached. Since the last court hearing on June 16, 2011, the parties have spent 5 days in mediation before Justice Robie. All major parties are participating in the mediation except for the Wood Class. (See J. Dunn Decl. at ¶ 2.) The settlement negotiations are to resolve the parties' claims including an allocation of both the native groundwater supply and the return flows from State Water Project imports. Although Public Water Suppliers and Wood Class Counsel returned to settlement discussions and worked to modify elements the earlier proposed settlement presented to the Court, the mediation with Justice Robie provides for a comprehensive settlement of the parties' claims. (See J. Dunn Decl. at ¶ 3; see also Transcript from June 16, 2011 Hearing at 12:23- 13:2.) In any event, the Public Water Suppliers and other parties remain hopeful that a comprehensive settlement can be achieved, and there is no valid reason for approving some \$35,000 worth of expert services unnecessary to the Adjudication. For reasons discussed herein, Los Angeles County Waterworks District No. 40 ("District 40") opposes Plaintiff Wood's Motion for Order Authorizing Court-Appointed Expert Witness Work ("Motion for Expert") and asks that the motion be denied.

**II. HISTORY OF PLAINTIFF WOOD'S MOTIONS FOR COURT-APPOINTED EXPERT AND STATUS OF SETTLEMENT**

By a stipulation executed on May 5, 2009, certain parties agreed to lift the Court's stay of the appointment of expert Timothy Thompson.<sup>1</sup> (See Order filed 4/24/2009 [Doc. 2595] [staying appointment of expert "until certain issues ha[d] been adjudicated"; see also Stipulation and Order Re: Small Pumper Class Notice Issues [Doc. 2642].) Mr. Thompson was thus hired to

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<sup>1</sup> Plaintiff Wood had moved for the appointment of an expert on March 30, 2009. (See Wood's Renewed Motion for Appointment of Expert [Doc. 2525].)

1 assist with the Adjudication, but for the limited purpose of “conduct[ing] a statistically significant  
2 assessment as to the percentage of the Class members actually satisfying the Class definition.”  
3 (See Stipulation and Order Re: Small Pumper Class Notice Issues [Doc. 2642] at ¶¶ 5-7.)  
4 Relying on data generated from the Wood Class notice response forms, supplemented as needed  
5 by further field work, Mr. Thompson was instructed to formulate reliable estimates of the water  
6 usage of the Class. (*Ibid.*) Mr. Thompson worked on this matter from May 1, 2009 through June  
7 26, 2009, and tendered an invoice for \$4,784.68 on February 10, 2011 to Mr. McLachlan for  
8 payment. (See Plaintiff Wood’s Supplemental Brief re Motion for Allocation of Court-Appointed  
9 Expert Witness Fees [Doc. 3400], Ex. 4.) By Supplemental Motion, on March 2, 2010, Plaintiff  
10 Wood moved this Court to (1) allocate the payment of Mr. Thomas’ expenses among the Public  
11 Water Suppliers and (2) authorize Mr. Thompson to analyze the water usage of the Class  
12 Members in preparation for Phase III’s determination of overdraft and safe yield (as further  
13 outlined in the proposal from Extrix). (Plaintiff Wood’s Supplemental Brief re Motion for  
14 Allocation of Court-Appointed Expert Witness Fees [Doc. 3400]; see also *id.*, Ex. 3 (Extrix  
15 proposal).) The Court, in turn, ordered certain Public Water Suppliers to pay Mr. Thompson’s  
16 fees, but declined to approve the Wood Class request for additional expert services, finding them  
17 immaterial to the Phase III issues of overdraft and safe yield. (See Order filed 5/25/2010 [Doc.  
18 3603].)

19 On May 2, 2011, the Wood Class filed its Motion for Preliminary Approval of Class  
20 Settlement [Doc. 4423], which this Court denied at a hearing held on June 16, 2011. (See Minute  
21 Order filed 6/17/2011 [Doc. 4485]. Following the hearing, parties have concentrated their efforts  
22 on achieving a comprehensive settlement. Wood Class Counsel is not participating in the  
23 mediation with Justice Robie.

24 Additionally, the Public Water Suppliers worked on the terms that delayed the Wood  
25 Class settlement’s preliminary approval. (See J. Dunn Decl. ¶ 4.) Wood Class Counsel  
26 participated in those settlement discussions with the Public Water Suppliers. The Wood Class  
27 motion comes with some surprise to District 40, particularly with respect to his oft-repeated  
28 allegations that the Public Water Suppliers oft-repeated express “little interest” in settling, and

1 “leaving the prescription claims hanging over the Class’ proverbial heads.” (Motion for Expert at  
2 5:14-27.)

3 Manufacturing an illusion of some strategized delay, Wood Class Counsel proclaims that  
4 Mr. Thompson is now needed to help defend the Wood Class against “a very unfair deal ...  
5 hatched [] with the farmers.” (Motion for Expert at 5:25-27, 6:1-4.) Although not participating in  
6 the Justice Robie mediation, Wood Class Counsel claims the Wood Class’ water use will be an  
7 obstacle to settlement discussions (*ibid.*), and, on these grounds, requests that Mr. Thompson be  
8 allowed to proceed with the work defined in items “D” and “E” of Entrix’s proposal. (See  
9 Motion for Expert, Ex. 5.) More specifically, Wood Class Counsel asks this Court to authorize  
10 Mr. Thompson to (1) determine the amount of water historically produced by the Wood Class and  
11 (2) opine on the groundwater usage attributed to the Wood Class during a trial that has not yet  
12 been set. (See Motion for Expert, Ex. 5.)

13  
14 **III. WOOD CLASS SEEK AN COURT APPOINTED EXPERT FOR THE WOOD**  
15 **CLASS CLAIMS**

16 The purpose for which the Wood Class seek an expert—to litigate issues particular to  
17 Plaintiff Wood and the Class Members — has no legal basis. Evidence Code Section 730, which  
18 the Wood Class erroneously relies upon, vests discretion in the court to appoint a neutral expert  
19 for use by the parties to the litigation, or by the court, in the development of issues universal to  
20 the lawsuit. (Evid. Code, § 730.) Importantly, however, Section 730 “does not authorize the  
21 appointment of experts whose work will be kept confidential” for the benefit of a single party, as  
22 the Wood Class proposes. (*People v. Angulo* (2005) 129 Cal.App.4th 303, 313-14 *modified*,  
23 *rehearing denied* Cal.App.LEXIS 755 (Cal.App.4th June 10, 2005).) The law is clear that  
24 “experts appointed under section 730 are necessary only when the court sees the need for an  
25 assessment by a disinterested and impartial expert who is not advocating on behalf of a party to  
26 the action.” (*In re Eric A.* (1999) 73 Cal.App.4th 1390, 1394 fn. 4, *citing Mercury Casualty Co. v.*  
27 *Superior Court* (1986) 179 Cal.App.3d 1027, 1032, 1033.) Evidence Code Section 730 does not  
28 authorize the type of biased expert service that the Wood Class seeks, and their motion should be

1 denied.

2 **IV. THE PUBLIC WATER SUPPLIERS REMAIN COMMITTED TO A**  
3 **COMPREHENSIVE SETTLEMENT AND THERE IS NO NEED FOR AN**  
4 **EXPERT AT THIS TIME.**

5 The two grounds upon which the Wood Class asserts an expert is needed, self-help and  
6 reasonable/beneficial use, concern issues adequately that could be adequately addressed by  
7 settlement. Authorizing the use of an expert for these tasks would be justified, if at all, only if the  
8 parties had abandoned settlement discussions and returned to litigating their claims. As this Court  
9 is aware, however, the parties had reached a settlement in principle, which was presented to this  
10 Court for preliminary approval, and following the Court's denial of same, the parties resumed  
11 settlement discussions to address issues raised by the Court. (See J. Dunn Decl. ¶ 5.) Neither the  
12 Public Water Suppliers nor Wood Class Counsel should desire to end such settlement  
13 discussions; indeed, both sides remain committed to settlement. Any existing delay surrounding  
14 such discussions relates to the complexity of a comprehensive settlement of the water rights  
15 claims.<sup>2</sup>

16 In light of progress already made, the Wood Class motion is premature, at best. Indeed,  
17 the very issues that Wood Class Counsel claims require an expert's assistance could be resolved  
18 by settlement. As one example, a settlement could account for the reasonable and beneficial  
19 water use by the Wood Class, recognizing the correlative rights of the Wood Class and other  
20 parties. (See, e.g., M. McLachlan Decl. filed 5/2/2011 [Doc. 4424], Ex. 1 at (Wood Class  
21 Stipulation of Settlement.) The Wood Class contention the expert is needed to help establish that  
22 Class Members were engaged in a "reasonable beneficial use" (Motion for Expert at 5:1-4) is  
23 undone by a settlement agreement. In short, to spend \$35,000 when the parties could participate  
24 in comprehensive settlement would be an imprudent allocation of public funds. Furthermore, if  
25 Wood Class water rights are, which they are not, threatened by an overall settlement process, it is  
26 curious that neither the Wood Class representative or his counsel have appeared at the last several

27 <sup>2</sup> See, e.g., *Environmental Defense Fund, Inc. v. East Bay Municipal Utility District* (1980) 26 Cal.3d 183, 194 ("The  
28 scope and technical complexity of issues concerning water resource management are unequalled by virtually any  
other type of activity presented to the courts.").

1 mediation sessions.

2 **V. EVEN IN THE ABSENCE OF SETTLEMENT, THE WOOD CLASS “SELF-  
3 HELP” CLAIMS DO NOT REQUIRE AN EXPERT.**

4 The Wood Class argues Mr. Thompson’s services are required to assist with the defense  
5 of self-help. (Motion for Expert at 4:6-25.) Notwithstanding that a settlement could extinguish a  
6 need to prove self-help, it is a factual issue not entirely “beyond common experience [such] that  
7 the opinion of an expert would assist the trier of fact.” (Evid. Code, § 801(a).) Here, self help is  
8 each party showing its individualized pumping during a particular time period. Moreover, the  
9 Court has not yet scheduled another phase of trial.

10 **VI. CONCLUSION**

11 This Court has, on several occasions, continued Wood Class motions to appoint an expert  
12 on account of settlement discussion or for other reasons. Here, again, with settlement discussions  
13 pending and no new phase of trial scheduled, engaging an expert now is unnecessary. Should the  
14 Wood Class disagree, they should retain Mr. Thompson, but on the condition that the cost be  
15 wholly borne by them. For the reasons herein stated, the Public Water Suppliers respectfully  
16 request the Motion be denied.

17 Dated: August 17, 2011

BEST BEST & KRIEGER LLP

18  
19 By: 

20 ERIC L. GARNER  
21 JEFFREY V. DUNN  
22 STERANIE D. HEDLUND  
23 Attorneys for Cross-Complainant  
24 LOS ANGELES COUNTY  
25 WATERWORKS DISTRICT NO. 40  
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DECLARATION

I, Jeffrey V. Dunn, declare as follows:

1. I am an attorney duly admitted to practice before this Court and I am a partner of the law firm Best Best & Krieger, attorneys of record for Los Angeles Waterworks District No. 40. I have personal knowledge of each and all of the facts contained herein and, if called as a witness, I could and would testify competently thereto under oath.

2. Since the last court hearing on June 16, 2011, the parties have spent 5 days in mediation before Justice Robie. All major parties are participating in the mediation except for the Wood Class.

3. Although Public Water Suppliers and Wood Class Counsel returned to settlement discussions and worked to modify elements the earlier proposed settlement presented to the Court, the mediation with Justice Robie provides for a comprehensive settlement of the parties' claims.

4. The Public Water Suppliers worked on the terms that delayed the Wood Class settlement's preliminary approval.

5. The parties had reached a settlement in principle, which was presented to this Court for preliminary approval, and following the Court's denial of same, the parties immediately resurrected settlement discussions to address the issues raised by the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed at Irvine, California this 17th day of August, 2011.



Jeffrey V. Dunn

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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 August 17, 2011, I served the within document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO WOOD CLASS MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK**

- ☒ 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 August 17, 2011, at Irvine, California.

  
Kerry V. Keefe