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LOS ANGELES COUNTY WATERWORKS
6 DISTRICT NO. 40

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

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13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
16

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

19 Included Actions:
Los Angeles County Waterworks District
20 No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
21 Angeles, Case No. BC 325201;

22 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
23 Court of California, County of Kern, Case
No. S-1500-CV-254-348;

24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
26 Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
27 RIC 353 840, RIC 344 436, RIC 344 668
28

Judicial Council Coordination No. 4408

CLASS ACTION

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

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40
NOTICE OF MOTION AND MOTION
FOR LEGAL FINDINGS ON WATER
CODE REQUIREMENTS TO REPORT
EXTRACTIONS OF GROUNDWATER IN
LOS ANGELES COUNTY;
DECLARATION OF JEFFREY V. DUNN;
EXHIBIT

Date: February 14, 2012
Time: 9:00 a.m.
Room: 1515

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 14, 2012, at 9:00 a.m., or as soon thereafter as
3 the matter be heard, in Room 1515 of the Los Angeles County Superior Court at 600 South West
4 Commonwealth Avenue, Los Angeles, California, Los Angeles County Waterworks District No.
5 40 will move and hereby does move for a court determination of the following legal issues:

6 1. Does Water Code section 4,999 *et seq* require a party extracting more than 25 afy
7 in Los Angeles County to file an annual notice with the State Water Resource Control Board?

8 2. If the answer to Question Number 1 is yes, is a party's failure to file the notice
9 deemed a party's non use of water for a reasonable and beneficial purpose under Water Code
10 sections 5003 and 5004?


11 3. For each party who files a notice, is the stated amount of ground water extraction
12 deemed to be the use of groundwater by that party for that reporting year?

13 The motion is made pursuant to the Court's Order during the December 13, 2011 Case
14 Management Conference, statutory and equitable authority of the Court to determine legal issues
15 in complex Judicial Council coordination proceedings including Code of Civil Procedure sections
16 187 and 591, Rule 3541 of the California Rules of Court , and the inherent powers granted to the
17 Court to manage complex coordination proceedings. (*Asbestos Claims Facility v. Berry & Berry*
18 (1990) 218 Cal.App.3d 9, 19 ["In the context of complex civil litigation, the court's 'inherent
19 managerial powers' have been invoked to ensure court's 'assume an aggressive role at the earliest
20 possible time to efficiently move the case to settlement or trial.'"])

21 Dated: January 17, 2012

BEST BEST & KRIEGER LLP

22
23
24 By


ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 For the last 8 months, the parties have participated in mediation with Justice Robie in
5 Sacramento. The parties have focused their efforts on the key settlement issue: allocation of the
6 safe yield. Despite numerous trips to Sacramento and many additional meetings and
7 teleconferences, the parties are at an impasse on the safe yield allocation. And they have been at
8 an impasse for months.

9 The largest and most divisive allocation dispute is a legal issue: Whether Water Code
10 section 4999 *et seq* applies in these coordination proceedings. It is for this reason, Los Angeles
11 County Waterworks District brought this important issue to the Court's attention at the last Case
12 Management Conference and the Court scheduled a hearing on February 14, 2012 to consider the
13 issue.

14 The issue needs to be decided as soon as possible. Without an early resolution of this
15 legal issue, the parties are unlikely to reach to a settlement of allocation and without an allocation
16 settlement there will not be an overall settlement of the case or physical solution to the increasing
17 overdraft of the Antelope Valley's groundwater supply. The key Water Code sections at issue are
18 explained below.

19
20 **II. THE WATER CODE PROVISIONS FOR LOS ANGELES COUNTY GROUND**
21 **WATER USERS**

22 Although the Court's overdraft decision was year, the Legislature has long recognized
23 overdraft risks to groundwater supplies in four Southern California counties: "The Legislature
24 finds and declares that by reasons of the combination of light rainfall, concentrated population,
25 the transition of considerable areas of land from agricultural use to urban use, and a similar
26 dependence upon ground water supplies which prevails in the Counties of Riverside, San
27 Bernardino, Los Angeles, and Ventura, together with the fact that most such underground water
28

1 supplies are overdrawn, it is necessary that the provisions of this part [Part 5 of the Water Code]
2 apply to said counties.” (Water Code § 4999 [Added in 1955 and amended in 1959].) But the
3 Legislature did more than recognize its concern and enacted statutes to protect ground water
4 supplies.

5 As explained below, Part 5 of the Water Code contains statutes that (1) require a party
6 using more than 25 acre fee a year (“afy”) in Los Angeles County to file an annual notice with the
7 State Water Resources Control Board; (2) impose a finding of a non use of water for a failure to
8 file the notice; and (3) establish a party’s use of ground water to be the amount stated in the
9 notice. (Water Code §§ 4999 *et seq.*) Given the increasing need to properly allocate the limited
10 ground water supply in these coordinated proceedings and the long-standing inability to
11 informally resolve the allocation disputes in judicial mediation and numerous settlement
12 discussions, court legal findings on the Water Code provisions is needed now to resolve an
13 allocation impasse by settlement and/or for subsequent court factual determinations and findings.

14 A. **The Water code Ground Water Reporting Requirements Apply To A Person**
15 **Or Entity Who Uses More Than 25 Acre Feet Annually In Los Angeles**
16 **County**

17 Water Code section 5001 requires each “person”¹ who extracts more than 25 afy of
18 ground water in Los Angeles County to file a “Notice of Extraction and Diversion of Water”
19 (“Notice”) with the California State Water Resources Control Board.²

20 Pursuant to Water Code section 5002, each person will file the Notice on the form
21 provided by the State Water Resources Control Board. As an example, Phase 3 Trial Exhibit No.
22 A-12 is a Notice filed by a landowner party in Los Angeles County. A true and correct copy of
23 the Notice that Exhibit A-12 in the Phase 3 trial is attached Exhibit “A” to the accompanying
24 declaration of Jeffrey V. Dunn. The Notice requires detailed information including the user

25 ¹ Water Code section 5000 provides definitions for the statutes in Part 5. For example, ground
26 water is defined as “water beneath the surface of the ground whether or not flowing through
27 known and definite channels.” “Person” is defined as “all persons whether natural or artificial,
28 including the United States of America, the State of California, and all political subdivisions,
districts, municipalities and public agencies.”

² There are listed reporting exceptions in Water Code section 5001 which do not appear
applicable these coordinated proceedings.

1 name, use location and the amount of ground water used. (*See* Water Code § 5002 [description of
2 notice form and information requirements].) The Notice is to be filed for each calendar year for
3 which the extraction exceeds 25 acre feet. (Water Code § 5001.)

4 B. **The State Water Resources Control Board's Required form Supports The**
5 **Motion**

6 The form that each party is required to fill in and return to the State Water Resources
7 Control Board states:

8 The dependence on groundwater in the Counties of Riverside, San
9 Bernardino, Los Angeles, and Ventura has resulted in diminishing
10 water suppliers. As water becomes more scarce, determination of
11 your water rights by the courts may become necessary. **Your**
12 **Annual Notice of Groundwater Extraction and Diversion is**
13 **required to establish a record of water use which can assist the**
14 **court in determining your rights.**

15 The California Water Code requires you to record your annual
16 surface and groundwater use if your total groundwater extractions
17 from all wells exceed 25 acre-feet. Extractions of less than 10 acre
18 feet from a single well need not be reported. Although there is no
19 penalty for failure to file the annual notice, **failure to file is**
20 **considered nonuse of water. Therefore, persons who do not file**
21 **notices may have difficulty supporting a claim of water use**
22 **during a lawsuit to establish ownership of groundwater rights.**
23 (Notice of Groundwater Extraction and Diversion Form, attached
24 hereto as Exhibit "A." to the Dunn Declaration. [Emphasis added].)

25 The form supports the statutory intent and further advises that failure to file the Notice will result
26 in a finding of nonuse. The form unequivocally states the Notice, or failure to file the Notice,
27 may be used in a court proceeding, "a lawsuit to establish ownership of groundwater rights."

28 C. **The Failure To File A Notice Is A Deemed Non Use Of Groundwater, No**
Groundwater Was Used For A Reasonable And Beneficial Purpose, And
There is A Loss Of Right For The Year In Which The Notice Was Not Filed

Water Code section 5003 provides that a party's failure to file the Notice is deemed to be
a finding "*that no claim of right to the extraction of ground water from any source in the four
counties has been made by the person, and that water extracted by the person from the
groundwater source during that period has not been devoted to or used for any beneficial use.*"
(Emphasis added.)

1 Additionally, Water Code section 5004 provides that, after the year 1959, the failure to
2 file the Notice for any calendar year “shall be deemed equivalent **for all purposes** to nonuse for
3 such year of any ground water within the four counties by each person failing to so file a notice
4 within said period; provided, that this section and Section 5003 shall not apply to any person
5 whose aggregate extractions of ground water in any year does not exceed 25 acre-feet nor to any
6 extractions of ground water with respect to which no notice is required under this part.”
7 (Emphasis added.) Finally, Section 5005 indicates there is a loss of ground water rights unless
8 there has been performance or excuse from performance as provided by Part 5.

9 Stated simply, Sections 5003, 5004 and 5005 state the failure to file the Notice is deemed
10 the non use of ground water for the reporting year, the amount of ground water extracted is
11 deemed not be used for a reasonable and beneficial purpose, and that no claim of right has been
12 made for that year.

13 **D. The Statutes’ Plain Meaning Supports The Motion**

14
15 In interpreting a statute, the California Supreme Court has held that courts should adopt a
16 literal or plain meaning interpretation. (*Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735
17 [“Words used in a statute or constitutional provision should be given the meaning they bear in
18 ordinary use. . . . If the language is clear and unambiguous there is no need for construction, nor
19 is it necessary to resort to indicia of the intent of the Legislature.”] Here, the statutory language is
20 not ambiguous and the consequence for failing to file the Notice required by Water Code section
21 5001 is clear and unequivocal: Water Code section 5004 provides that failure to file the required
22 Notice “shall be deemed equivalent *for all purposes to nonuse.*” (Water. Code § 5004 [emphasis
23 added].)

24
25 **III. THE FAILURE TO FILE THE NOTICE IS THE EQUIVALENT OF THE**
26 **NONUSE OF GROUND WATER AND THE NONUSE OF WATER FOR**
27 **REASONABLE AND BENEFICIAL USE FOR THE REPORTING YEAR**

28 A plain reading of Water Code sections 4999 through 5005, inclusive, requires the

1 following legal findings in these coordinated proceedings:
2

- 3 1. All parties who used more than 25 afy in Los Angeles County are subject to
4 Water Code section 4999 *et seq*, unless exempted by Water Code Section 5001.
5
6 2. A party's failure to file the Notice as required by Water Code section 5001, is
7 deemed to be a non use of groundwater, a non use of ground water for reasonable
8 and beneficial use, and a loss of ground water right for each year in which the
9 Notice was required.
10
11 3. A party's filing of the Notice as required by Water Code Section 5001, is deemed
12 to be the party's use of groundwater in the amount stated in the Notice.
13
14

15 **IV. CONCLUSION**
16

17 The Court should find, as a matter of law, the failure of any party in Los Angeles County
18 to comply with Water Code sections 4999 through 5005, inclusive, is deemed the non use of
19 ground water for any year in which a notice was required to be filed with the State Water
20 Resources Control Board. For those parties who properly filed Notices, the amount of ground
21

22 ///

23
24 ///

25
26 ///


27
28 ///

1 water stated in the Notice is deemed to be the amount of groundwater used by the party.
2 Settlement is unlikely without the Court's decision on these legal issues and the Court will have
3 to determine the issues before making further factual findings in subsequent phases of trial, if any.

4
5 Dated: January 17, 2012

BEST BEST & KRIEGER LLP

6
7 By


ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

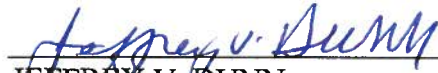
1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law. I am an attorney duly licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40.

2. This Declaration is filed in support of Los Angeles County Waterworks District No. 40's Notice of Motion and Motion For Legal Findings on Water Code Requirements to Report Extractions of Groundwater in Los Angeles County.

3. Attached hereto as Exhibit "A" is a true and correct copy of Phase 3 trial exhibit A-12.

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

Executed this 17th day of January, 2012, at Irvine, California.


JEFFREY V. DUNN

26345.00009\7215201.1

EXHIBIT “A”

PLEASE COMPLETE. SUBMIT THE ORIGINAL AND MAKE A COPY FOR YOUR RECORDS

State of California, State Water Resources Control Board, Division of Water Rights

P.O. BOX 2000, SACRAMENTO, CA 95812-2000

Info: (916) 341-6300, FAX: (916) 341-6400, Web: <http://www.waterrights.ca.gov>

ANNUAL NOTICE OF EXTRACTION AND DIVERSION OF WATER (GROUNDWATER RECORDATION PROGRAM)

G191050

2009

If the owner information below is wrong or missing, please correct.
PRIMARY OWNER OF RECORD EST OF E A NEBEKER

PRIMARY CONTACT OR AGENT FOR MAIL & REPORTING:

EST OF E A NEBEKER
400 N ROCKINGHAM AVE
LOS ANGELES, CA 90049

DATION NO: G191050
CT PHONE NO: (310)440-8862

Owner's Designation of Well

State Well Number

Parcel Number

4

08N13W-11M 9

DEADLINE: Notices must be received no later than June 30, 2010 in order to be recorded.

REQUIRED FEES: A filing fee of \$50.00 is required for each Annual Notice of Groundwater Extraction and Diversion. Check or money order should indicate your association number(s) and be made payable to: State Water Resources Control Board. Do not send cash.

PLEASE READ THE GENERAL INFORMATION ON THE REVERSE SIDE BEFORE COMPLETING THIS NOTICE

If the above information is inaccurate, please line it out in red and provide current information. Notify this office if ownership or address changes occur during the coming year.

1. TYPE OF DIVERSION ☒ Groundwater extraction or ☐ Surface diversion

2. OWNERSHIP. Person listed below is:

☒ Owner of land on which well or point of diversion is located, and is extracting/diverting water.

☐ Lessee of land on which well or point of diversion is located, and is extracting/diverting water.

☐ Owner of land, but lessee is extracting/diverting water.

☐ Other. Please explain: _____

3. AMOUNT OF GROUNDWATER EXTRACTED DURING CALENDAR YEAR →

4. AMOUNT OF SURFACE WATER DIVERTED DURING CALENDAR YEAR →

5. METHOD OF MEASUREMENT ☐ Water Meter ☒ Power Meter ☐ Non-metered or Estimated

6. TYPE OF WATER USE ☒ Agricultural ☐ Domestic or Municipal ☐ Other _____

7. ACTION REQUESTED (Check one):

☐ Reopen file. (Fee required)

☐ Close this file. (No fee required)

☒ Record my water use. (Fee required)

☐ Do not record my water use but keep my name on mailing list. (No fee required)

_____-0-_____ (Must be a specific number)	<input checked="" type="checkbox"/> acre-feet <input type="checkbox"/> cubic-foot <input type="checkbox"/> gallons
--	--

Annual quantity _____ Season of diversion Begin _____ End _____ Maximum rate of diversion _____	<input type="checkbox"/> acre-feet <input type="checkbox"/> cubic-foot <input type="checkbox"/> gallons
---	---

Transfer this file to:

Company Name: _____ (NEW OWNERS FIRST NAME) (M. NAME) (LAST NAME)

Address: _____ (MAILING ADDRESS) (CITY) (STATE) (ZIP CODE)

Telephone: () _____ Effective Date: _____

8. SUPPLEMENTAL INFORMATION. Please list any changes in your project since last year (new pump, new land irrigation, new method of irrigation, etc.) or any other comments.

9. CERTIFICATION AND SIGNATURE: I certify that the foregoing statements are true and correct to the best of my knowledge.

Signature: Eugene E. Nebeker Date 5/19/10

Printed Name: Eugene E. Nebeker (FIRST NAME) (M. NAME) (LAST NAME)

Company Name: Nebeker Ranch, Inc.

THIS SPACE FOR OFFICE USE ONLY

R.

AMT:

GENERAL INFORMATION

The dependence on groundwater in the Counties of Riverside, San Bernardino, Los Angeles, and Ventura has resulted in diminishing water supplies. As water becomes more scarce, determination of your water rights by the courts may become necessary. Your Annual Notice of Groundwater Extraction and Diversion is required to establish a record of water use which can assist the court in determining your rights.

The California Water Code requires you to record your annual surface and groundwater use if your total groundwater extractions from all wells exceed 25 acre-feet. Extractions of less than 10 acre-feet from a single well need not be reported. Although there is no penalty for failure to file the annual notice, failure to file is considered nonuse of water. Therefore, persons who do not file notices may have difficulty in supporting a claim of water use during a lawsuit to establish ownership of groundwater rights.

Exceptions: (1) If you are currently reporting your pumpage to a watermaster, your water use is already on record, and you are exempt from the requirement of filing a notice, or (2) If annual water use is less than the required amounts, filing is optional because these minimal amounts would probably not be affected by a water right dispute. All optional notices that are accompanied by appropriate fees will be recorded.

Should you require additional information about the Water Code requirements or assistance in completing this form, please write to the address on the top of this form, or telephone (916) 341-5300.

TABLE 1: AGRICULTURAL WATER USE WORKSHEET (Optional)

To estimate your use of water, indicate below the crop type and number of acres. Then find the average irrigation requirement for each crop using Table II. Multiply acres (column 1) to applied water depth (column 2) to determine the amount pumped (column 3). Then total all amounts in column 3 to determine total irrigation use.

CROP	COLUMN 1	COLUMN 2	COLUMN 3
	ACRES	AVERAGE APPLIED WATER DEPTH (acre-feet per acre)	AMOUNT PUMPED (acre-feet) (column 1 X column 2)
CONVERSION FACTORS One acre-foot (af) = 43,560 cubic feet = 325,900 gallons One miner's inch is approximately 9 gallons per minute. An acre-foot covers one acre of land, one foot deep			TOTAL IRRIGATION USE

TABLE II: AVERAGE DEPTH OF WATER APPLIED TO IRRIGATE EACH CROP (acre-foot per acre)¹

LOCALITY ²	ALFALFA	AVOCADOS	BEANS	DATES	LEMONS	LETTUCE	PERMANENT PASTURE	TOMATOES
1. Los Angeles County								
a. Coastal Basin		2.0 - 2.5			2.0 - 2.5	2.0 - 2.5		
b. Antelope Valley	7.6						7.4	
2. Eastern Riverside County								
a. Coachella & Blythe Area	9.0 - 10.0			7.5 - 9.0	5.5 - 6.0	3.6 - 4.2	9.0 - 10.0	4.3 - 6.4
3. Western Riverside County	4.0 - 4.5	2.5 - 3.0			2.5 - 3.0	2.0 - 2.5	4.5 - 5.0	
4. San Bernardino County								
a. Chino Area	4.0 - 4.5	2.5 - 3.0			2.5 - 3.0	2.0 - 2.5	4.5 - 5.0	2.3 - 2.5
b. San Bernardino Area	4.0 - 4.5	2.5 - 3.0			2.5 - 3.0	2.0 - 2.5	4.0 - 5.0	2.3 - 2.5
c. Barstow-Apple Valley	6.0 - 6.5						6.0 - 6.5	
d. Ontario	4.0 - 4.5	2.5 - 3.0			2.5 - 3.0		4.0 - 5.0	2.3 - 2.5
e. Highlands-Rodlands	4.0 - 4.5	2.5 - 3.0			2.5 - 3.0		4.0 - 5.0	2.3 - 2.5
5. Ventura County	4.0 - 4.5	2.3 - 2.5	1.3 - 1.5		2.3 - 2.5	2.0 - 2.5	4.0 - 4.5	2.0 - 2.5

¹Based on information provided by Agricultural Extension Service of the University of California.

²Updated: Department of Water Resources, Southern District II Backup data for the California Water Plan, Bulletin 160-98. Date August 21, 2000

³Unit use values for crops grown in each region.

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 January 17, 2012, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40 NOTICE OF IN LIMINE MOTION NUMBER 1 AND MOTION IN LIMINE NUMBER 1 FOR LEGAL FINDINGS ON WATER CODE REQUIREMENTS TO REPORT EXTRACTIONS OF GROUNDWATER IN LOS ANGELES COUNTY; DECLARATION OF JEFFREY V. DUNN; EXHIBIT

- ☒ 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 January 17, 2012, at Irvine, California.


Kerry V. Keefe