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DISTRICT NO. 40

EXEMPT FROM FILING FEES
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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 once again seeks court approval for Timothy Thompson to proceed with work previously deemed unnecessary by this Court. After failing to persuade this Court to grant its request in August 2011, the Wood Class has re-filed the same motion. As in the August 2011 motion, the Wood Class once again improperly seeks to have only a few parties, the Public Water Suppliers, pay for Mr. Thompson to gather evidence to assist the Wood Class.

A hearing on this instant motion was initially set for February 14, 2012. At that hearing, the Court directed Defendant Los Angeles County Waterworks District No. 40 ("District 40") to file its opposition to the Wood Class's motion. As with the previous motion and requests, there is no legal basis for the Court to order the Public Water Suppliers to pay an expert witness to assist the Wood Class. District No. 40 again opposes Plaintiff Wood Class's Motion for Order Authorizing Court-Appointed Expert Witness Work ("Motion for Expert") and respectfully requests that the Court deny the motion.

II. HISTORY OF PLAINTIFF WOOD'S MOTIONS FOR COURT-APPOINTED EXPERT

By a stipulation executed on May 5, 2009, certain parties agreed to lift the Court's stay of the appointment of expert Timothy Thompson.¹ (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 assist with the Adjudication, but for the limited purpose of "conduct[ing] a statistically significant assessment as to the percentage of the Class members actually satisfying the Class definition." (See Stipulation and Order Re: Small Pumper Class Notice Issues [Doc. 2642] at ¶¶ 5-7.) Relying on data generated from the Wood Class notice response forms, supplemented as needed by further field work, Mr. Thompson was instructed to formulate reliable estimates of the water usage of the Class. (*Ibid.*) Mr. Thompson worked on this matter from May 1, 2009 though June

¹ 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].)

26, 2009, and tendered an invoice for \$4,784.68 on February 10, 2011 to Mr. McLachlan for payment. (See Plaintiff Wood's Supplemental Brief re Motion for Allocation of Court-Appointed Expert Witness Fees [Doc. 3400], Ex. 4.) By Supplemental Motion, on March 2, 2010, Plaintiff Wood moved this Court to (1) allocate the payment of Mr. Thomas' expenses among the Public Water Suppliers and (2) authorize Mr. Thompson to analyze the water usage of the Class Members in preparation for Phase III's determination of overdraft and safe yield (as further outlined in the proposal from Entrix). (Plaintiff Wood's Supplemental Brief re Motion for Allocation of Court-Appointed Expert Witness Fees [Doc. 3400]; see also *id.*, Ex. 3 (Entrix proposal).) Despite the objection and opposition by Public Water Supplier parties, the Court ordered them certain Public Water Suppliers to pay Mr. Thompson's fees, but declined to approve the Wood Class's request for additional expert services, finding them immaterial to the Phase III issues of overdraft and safe yield. (See Order filed 5/25/2010 [Doc. 3603].)

On May 2, 2011, the Wood Class filed its Motion for Preliminary Approval of Class Settlement [Doc. 4423], which this Court denied at a hearing held on June 16, 2011. (See Minute Order filed 6/17/2011 [Doc. 4485].)

Manufacturing an illusion of some strategized delay, Wood Class Counsel proclaims that Mr. Thompson is now needed to help defend the Wood Class against "a very unfair deal ... hatched [] with the farmers." (Motion for Expert at 6:4-14.) Although not participating in the Justice Robie mediation, Wood Class Counsel claims the Wood Class' water use will be an obstacle to settlement discussions (*ibid.*), and, on these grounds, requests that Mr. Thompson be allowed to proceed with the work defined in items "D" and "E" of Entrix's proposal. (See Motion for Expert, Ex. 5.) More specifically, Wood Class Counsel asks this Court to authorize Mr. Thompson to (1) determine the amount of water historically produced by the Wood Class and (2) opine on the groundwater usage attributed to the Wood Class during a trial that has not yet been set. (See Motion for Expert, Ex. 5.)

III. WOOD CLASS COUNSEL AGAIN SEEK AN EXPERT FOR THE WOOD CLASS CLAIMS

The purpose for which the Wood Class seek an expert—to litigate issues particular to

Plaintiff Wood and the Class Members — has no legal basis. Evidence Code Section 730 vests discretion in the court to appoint a neutral expert for use by the parties to the litigation, or by the court, in the development of issues universal to the lawsuit. Importantly, however, Section 730 does not authorize the appointment of experts for the benefit of a single party. (*People v. Angulo* (2005) 129 Cal.App.4th 303, 313-14 *modified, rehearing denied* Cal.App.LEXIS 755 (Cal.App.4th June 10, 2005).) The law is clear that “experts 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.4th 1390, 1394 fn. 4, *citing Mercury Casualty Co. v. Superior Court* (1986) 179 Cal.App.3d 1027, 1032, 1033.) Evidence Code Section 730 does not authorize the type of biased expert service that the Wood Class seeks, and their motion should be denied.

IV. **IT IS PATENTLY UNFAIR TO HAVE PUBLIC WATER SUPPLIERS PAY FOR THE COST OF AN EXPERT WITNESS WHEN THE WOOD CLASS WATER RIGHTS ARE CORRELATIVE TO ALL OTHER OVERLYING PARTIES**

The two grounds upon which the Wood Class asserts an expert is needed, self-help and reasonable/beneficial use, concern issues that have not been set for trial. It is wrong to require the Public Water Suppliers to pay for an expert whose sole purpose is to assist the Wood Class in preparation of their case involving the groundwater rights of all parties. Stated simply, the Wood Class cannot establish a groundwater right without determining the correlative groundwater rights of the other private and public property owners in the coordinated and consolidated cases. Furthermore, there is no pending trial date and if the Wood Class Motion were proper, which it is not, it is premature. Should the Wood Class disagree, they should retain Mr. Thompson, but on the condition that the cost be wholly borne by them. For the reasons herein stated, the Public Water Suppliers respectfully request the Motion be denied.

1 Dated: March 12, 2012

BEST BEST & KRIEGER LLP

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3 By: 

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Attorneys for Defendant

LOS ANGELES COUNTY

WATERWORKS DISTRICT NO. 40

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 March 12, 2012, I served the within document(s):

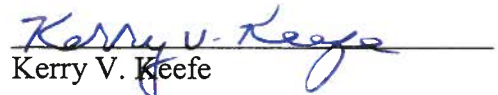
PUBLIC WATER SUPPLIERS' OPPOSITION TO WOOD CLASS MOTION FOR ORDER AUTHORIZING COURT-APPOINTED EXPERT WITNESS WORK

- ☒ 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 March 12, 2012, at Irvine, California.


Kerry V. Keefe