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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

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

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 RICHARD WOOD’S
MOTION FOR ORDER AUTHORIZING
COURT-APPOINTED EXPERT WITNESS
WORK**

Date: July 9, 2012
Time: 9:00 a.m.
Dept.: 316

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1 **I. INTRODUCTION**

2 The Wood Class again seeks court approval for the appointment of an expert witness to
3 establish the Wood Class members' groundwater use at the Public Water Suppliers' expense. The
4 Wood Class Action is part of coordinated and consolidated proceedings for a comprehensive
5 adjudication of groundwater rights in the Antelope Valley. The cost of any court-appointed
6 expert should be imposed upon all parties and not just the Public Water Suppliers. In any event,
7 there is no legal basis to impose expert witness costs upon adverse parties. As with similar, if not
8 identical motions denied by the court, the Public Water Suppliers again oppose Plaintiff Wood's
9 Motion for Order Authorizing Court-Appointed Expert Witness Work and again request the
10 motion be denied.

11 **II. WOOD CLASS SEEK A COURT APPOINTED EXPERT FOR THE WOOD**
12 **CLASS CLAIMS**

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

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1 **III. IF THE COURT IS INCLINED TO GRANT THE WOOD CLASS MOTION, THE**
2 **COSTS OF THE EXPERT WITNESS SHOULD BE IMPOSED UPON ALL**
3 **PARTIES AND NOT JUST THE PUBLIC WATER SUPPLIERS**

4 If the court is inclined to grant the motion, it should apportion the cost of the expert
5 among all active parties, not just the Public Water Suppliers.¹ The court has recognized on several
6 occasions that determining the amount of pumping by the Wood Class members is necessary in
7 order to determine the allocation of the safe yield of the basin to all parties, including the
8 landowners. Any amount of water allocated to or reserved for the Wood Class necessarily reduces
9 the amount available for all other parties.

10 The court acknowledged this reality in its consolidation order:

11 “In a single aquifer, all water rights are said to be correlative to all other water rights in the
12 aquifer. A determination of an individual party’s water rights (whether by an action to quiet title
13 or one for declaratory relief) cannot be decided in the abstract but must also take into
14 consideration all other water rights within a single aquifer.” (Order dated February 24, 2010, at p.
15 2, ll. 18–22.)

16 “If the basin is in overdraft (a fact still to be established), the Court in each declaratory
17 relief proceeding would of necessity have to look at the totality of pumping by all parties,
18 evaluate the rights of all parties who are producing water from the aquifer, determine whether
19 injunctive relief was required, and determine what solution equity and statutory law required
20 (including a potential physical solution).” (*Id.* at p. 3, ll. 7–11.)

21 The court also denied approval to the settlement between the Public Water Suppliers and
22 the Wood Class, on the grounds that allocating water to the Wood Class necessarily affected the
23 rights of all the parties, not just the Public Water Suppliers. (*See* transcript of June 16, 2011 at p.
24 3 (attached).) The court stated: “You have to acknowledge the fact that as to other parties the
25 court has to make findings based upon evidence. I can’t do that based upon an agreement of some
26 of the parties, but not all of the parties. And I understand that the concern that you have is that

27 ¹ One possible apportionment is according to the parties’ groundwater production, as determined by the court in the
28 upcoming prove-up hearing or trial.

1 you can't settle this case without that kind of a finding binding everybody, but I can't make that
2 kind of a finding without evidence and an opportunity for the parties to dispute it." (*Id.*)

3 Because the evidence of Wood Class pumping is necessary to determine *all* the parties'
4 water rights and to fashion a physical solution, the cost should be borne by all parties.

5 This is expressly authorized by the Code of Civil Procedure:

6 "Except as otherwise provided in this section, in all civil actions, the compensation fixed
7 under Section 730 shall, in the first instance, be apportioned and charged to the several parties in
8 such proportion as the court may determine and may thereafter be taxed and allowed in like
9 manner as other costs." (Civ. Proc. Code §731, subd. (c).)

10 Under the court's consolidation order, dated February 19, 2010, "parties" means all parties
11 to the consolidated actions. In a complete consolidation or consolidation for all purposes, the
12 pleadings are regarded as merged, one set of findings is made, and one judgment is rendered.
13 (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1147; *Sanchez v. Superior Court* (1988) 203
14 Cal.App.3d 1391, 1396.)

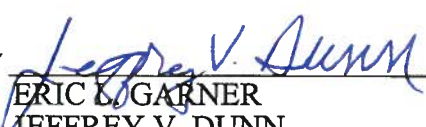
15 **IV. CONCLUSION**

16 For the reasons herein stated, the Public Water Suppliers respectfully request the Motion
17 be denied.

18
19
20 Dated: June 25, 2012

BEST BEST & KRIEGER LLP

21
22 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 June 25, 2012, I served the within document(s):

**PUBLIC WATER SUPPLIERS' OPPOSITION TO RICHARD WOOD'S 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.



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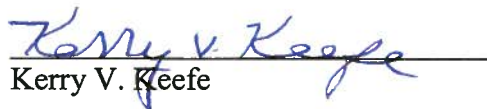


I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

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 June 25, 2012, at Irvine, California.


Kerry V. Keefe