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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

19 **Included Actions:**

20 Los Angeles County Waterworks District  
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  
Court of California, County of Kern, Case  
23 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

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 TO DECERTIFY SMALL  
PUMPER CLASS**

Date: July 9, 2012

Time: 9:00 a.m.

Dept.: 316

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1 This motion is brought because class council does not wish to pay for his own expert.  
2 Council wishes to place the burden of this expert upon a small subset of the parties to this  
3 litigation – the Public Water Suppliers. Class council may hire an expert at any time, but  
4 requesting the court either decertify the class or require the Public Water Suppliers to pay for an  
5 expert, is unfair to the court, the Public Water Suppliers, and every other party in this coordinated  
6 and consolidated action.

7 **I. THE MOTION IS NOT TIMELY BECAUSE THE COURT HAS REACHED A**  
8 **DECISION ON THE MERITS.**

9 “Once the initial determination has been made [to certify a class], a motion to decertify the  
10 class action may be used whenever changed circumstances render class status no longer  
11 appropriate. But a request for decertification must be made before a decision on the merits.”  
12 *Danzig v. Jack Grynberg & Assocs.* (1984) 161 Cal.App.3d 1128, 1136 citing *Occidental Land,*  
13 *Inc.* (1976) 18 Cal.3d 355, 360; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-149. As the Wood  
14 Class Counsel acknowledges, a decision on the merits has been made in these coordinated and  
15 consolidated adjudication proceedings: “On July 13, 2011, the Court issued its Statement of  
16 Decision for the Phase Three Trial in which the Court found that the basin has been in a state of  
17 overdraft since 1951.” (Wood Class Motion To Decertify Small Pumper Class, p. 5; lns. 9-11.)  
18 Stated simply, the Wood Class Motion is not timely and should be denied.

19 **II. WOOD CLASS COUNSEL HAS NOT ESTABLISHED THAT THE WOOD**  
20 **CLASS REPRESENTATIVE OR ANY OTHER CLASS MEMBERS CONSENTS**  
21 **TO THE DECERTIFICATION OF THE CLASS – OR IS EVEN AWARE OF THE**  
22 **DECERTIFICATION MOTION.**

23 *There is no showing that the decertification motion is in the best interests of the Wood*  
24 *Class.* Conspicuously absent from the Wood Class Motion is any declaration establishing notice  
25 of the decertification was provided to the Wood Class Representative. The motion should be  
26 denied on the grounds that there is no showing that decertification is in the best interests of the  
27 Wood Class members.

28 **III. CLASS COUNSEL HAS NOT ESTABLISHED GOOD CAUSE TO DECERTIFY**  
**THE CLASS.**

Even if the Wood Class Motion was timely, it failed to establish good cause for class

1 decertification. A trial court “can decertify the class later if discovery reveals the common issues  
2 do not predominate.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 836. Even  
3 if a conflict were to arise, decertification of the class is “too drastic a remedy.” *National Solar*  
4 *Equipment Association, Inc. v. Grumman Corp.* (1991) 235 Cal.App.3d 1273, 1285.

5 Here, there are no legally-acceptable grounds for decertification. There is no showing of  
6 any irreconcilable conflict amongst the members of the Wood Class so that the common issues  
7 applicable to the class members no longer are applicable. Instead, Wood Class Counsel, again,  
8 threatens the court with class decertification which is really a thinly-veiled motion to withdraw as  
9 class counsel.

10 **IV. CLASS COUNSEL HAS NOT ESTABLISHED THAT THE WILLIS CLASS**  
11 **MEMBERS CANNOT PROVE THEIR WATER USE IN THE ABSENCE OF A**  
12 **COURT-APPOINTED EXPERT**

13 There is no showing or even an effort made to explain why the Wood Class members  
14 could not establish their groundwater requirements other than by an expert witness. There has  
15 been no showing why class discovery as to the class members’ respective groundwater use would  
16 not provide evidence of their groundwater use. There has been no showing that the Wood Class  
17 could not cooperate or collaborate with other private landowner parties and their attorneys to  
18 establish groundwater use.

19 The Wood Class Counsel would have the court decertify the Wood Class for its own  
20 failure to establish its groundwater use. Every other party to these coordinated and consolidated  
21 adjudication proceedings bears the burden of establishing its respective pumping and there is no  
22 good cause to excuse the Wood Class.

23 **V. WOOD CLASS COUNSEL REPRESENTED THAT IT WAS CAPABLE OF**  
24 **ADEQUATELY REPRESENTING THE CLASS**

25 The Wood Class Motion omits reference to the fact that the Wood Class Counsel sought  
26 both certification of the Wood Class and appointment as the Wood Class Counsel. A  
27 fundamental requirement for the court approval of class counsel is the class counsel’s  
28 representation that it is “qualified to conduct the pending litigation. . . .” (*McGhee v. Bank of*  
*America* (1976) 60 Cal.App.3d 442, 451. “Of obvious relevance to this requirement is counsel’s

1 experience and success in comparable cases, demonstrating ability and *sufficient resources to*  
2 *prosecute the case*. Class action lawsuits are often significantly more complex and expensive  
3 than individual suits and, as a result, attorneys seeking appointment as class counsel often join  
4 forces, forming a consortium of attorneys and firms who come together to jointly conduct the  
5 necessary work and spread the costs and risks of the undertaking.” (Cabraser, *California Class*  
6 *Action Practice and Procedure* (2005) § 6.07, p. 6-14 [emphasis added].)

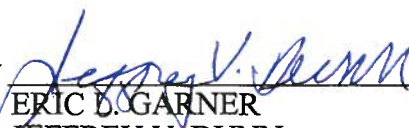
7 Wood Class Counsel’s refusal to hire an expert witness for the Wood Class is not  
8 sufficient grounds to decertify the Wood Class. Wood Class Counsel represented to the court that  
9 the Wood Class Counsel could and would adequately represent the Wood Class. If that  
10 representation was false, the court should consider establishing further proceedings and to  
11 determine the appropriateness of continued representation by the currently-appointed Wood Class  
12 Counsel. It is not proper or fair, however, for the court to impose the financial burden of an  
13 expert witness on the defendant parties as a condition of the continued representation of the Wood  
14 Class Counsel.

15 **VI. CONCLUSION**

16 There is no showing of any fatal defect with the class action procedure but merely Class  
17 Counsel’s on going threats to stop representing the Wood Class unless the court appoints an  
18 expert witness at certain other parties’ expense. The court could should acquiesce but consider  
19 appointing other class counsel if the court is concerned about the Wood Class Counsel’s  
20 representation of the Wood Class.

21 Dated: June 25, 2012

BEST BEST & KRIEGER LLP

22  
23  
24 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):

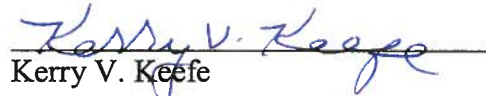
**PUBLIC WATER SUPPLIERS' OPPOSITION TO RICHARD WOOD'S MOTION TO DECERTIFY SMALL PUMPER CLASS**

- ☒ 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 June 25, 2012, at Irvine, California.

  
Kerry V. Keefe