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13 COUNTY WATERWORKS DISTRICT NO. 40

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

**REPLY TO COMMENTS AND  
OPPOSITION RE MOTION FOR  
APPOINTMENT OF BILL B. DENDY AS  
MANDATORY SETTLEMENT REFEREE**

**Hearing:**

**Date:** August 20, 2007

**Time:** 9:00 a.m.

**Dept.:** 1

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

I. INTRODUCTION

All parties will benefit by the Court granting two motions: The first motion is to certify the plaintiff Willis class action as modified by the Public Water Suppliers so that this case may be at issue. The second is the subject of the pending motion, to appoint Mr. Bill Dendy as a Mandatory Settlement Conference Referee.

Although there were but only a few objections to a mandatory settlement conference referee, it “seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits which are now an ever increasing burden to so many federal [and state] courts and which frequently present serious problems of management and expense.” (*Van Brockhorst v. Safeco Corp.* (9<sup>th</sup> Cir. 1977) 529 F.2d 943, 950.) Although Rosamond Community Services District and Los Angeles County Waterworks District No. 40 did not initiate this litigation, they do seek to end it as quickly and efficiently as possible. Adjudications are expensive and time-consuming and the Court should seriously consider any option that would decrease the cost, particularly to smaller parties and class members. Appointing Mr. Dendy as a settlement referee should reduce the time and expense in resolving these complex cases including the plaintiffs’ class action filed by putative class representative Willis.

II. MR. DENDY WILL REPORT ON THE STATUS OF THE PARTIES NEGOTIATIONS BUT NOT THEIR CONFIDENTIAL SETTLEMENT DISCUSSIONS

Many of the active principal parties have already agreed to employ Mr. Dendy to serve as a facilitator for their settlement discussions. Rosamond Community Services District and Los Angeles County Waterworks District No. 40 believe Mr. Dendy will be most effective if he is

1 formally appointed by the court and engages in mandatory settlement conferences, with court  
2 supervision, rather than private mediation.

3  
4 Court appointment should not dramatically change Mr. Dendy's activities. He would still  
5 organize settlement meetings with parties, collectively and individually. He would report to the  
6 Court on the progress of negotiations and the issues being discussed. He would not disclose  
7 confidential settlement discussions.

8  
9 III. COURT SUPERVISION OVER THE SETTLEMENT PROCESS CAN BE THE MOST  
10 EFFICIENT WAY TO REACH A SETTLEMENT

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12 The few objections to Mr. Dendy's appointment as a mandatory settlement referee  
13 generally fall into two categories. Most argue that Mr. Dendy's appointment as a mandatory  
14 settlement referee is premature. They fail to mention, however, that it has been nearly eight years  
15 since Diamond Farming and Bolthouse Farms sued the public water supplies to prioritize their  
16 farming water rights above that of the public water suppliers' drinking water needs. The  
17 groundwater adjudication seeking a physical solution was filed nearly three years ago. Rosamond  
18 Community Services District and Los Angeles County Waterworks District No. 40, respectfully  
19 suggest that far from being premature, the appointment of a settlement referee with court  
20 supervision is overdue.

21  
22 Pursuing settlement now is in the best interest of all parties and no one seriously argues  
23 that Mr. Dendy would not be of assistance in the settlement process. In groundwater  
24 adjudications it is common for a majority of the parties to settle and enter into a stipulated  
25 physical solution, leaving relatively few parties to litigate. (See generally *City of Los Angeles v.*  
26 *City of San Fernando* (1975) 14 Cal. 3d. 199, 207-208, *City of Barstow v. Mojave Water Agency*  
27 (2000) 23 Cal. 4th 1224, 1235-1236). With a settlement referee many parties may settle and a  
28 voluntary physical solution may be put in place even before trial begins. For example, in *Mojave*

1 the physical solution began several years before the final court decision. (*Mojave* at p.1236.)  
2 Implementation of a physical solution before the case ends, may prove to be particularly  
3 important given the water shortage conditions in the Antelope Valley Groundwater Basin  
4 (“Basin”) described in the United States Geological Service (“USGS”) exhibit attached to  
5 Antelope Valley Kern Water Agency’s (“AVEK”) opposition to the pending motion. The USGS  
6 report clearly articulates the serious, long-term problem of overdraft in the Basin. These water  
7 shortage conditions in the Basin underscore the need for efficient facilitation of the litigation so a  
8 physical solution can be implemented in a timely manner. Despite the limited opposition, all  
9 parties benefit from an expedited settlement process. Appointing Mr. Dendy as a Mandatory  
10 Settlement Conference Referee is an important step in that direction.

11  
12 IV. THE COURT HAS AUTHORITY TO APPOINT A SETTLEMENT REFEREE

13  
14 The second category of objections are incorrect and inapplicable procedural arguments.  
15 This Court has the authority to appoint a settlement referee. The case law, statutes and court rules  
16 cited in the motion are accurate and correctly reflect this Court’s authority to appoint Mr. Dendy  
17 as a settlement referee.

18  
19 Pursuant to Code of Civil Procedure sections 187 and 639, Rules 3.920 and 3.1380 of the  
20 California Rules of Court, and case law, it is within this Court’s power to appoint Mr. Dendy to  
21 conduct mandatory settlement conferences in these coordinated and consolidated complex cases.  
22 In designated complex cases, settlement conferences can be presided over by a settlement judge  
23 or by a referee pursuant to Code of Civil Procedure sections 187 and 639. (*Lu v. Superior Court*  
24 (*Grand Lincoln Village Homeowner Association*) (1997) 55 Cal.App.4<sup>th</sup> 1264, 1270-1271.)

25  
26 One party incorrectly suggested that *Jeld-Wen, Inc. v. Superior Court* (2007) 146  
27 Cal.App.4th 536 is inconsistent with *Lu v. Superior Court, supra*, 55 Cal.App.4<sup>th</sup> at 1270-1271.  
28 That party failed to mention that the *Jeld-Wen* Court distinguished *Lu*, stating “the appellate court

1 concluded that the net effect of the order was to allow a referee, rather than a judge, to conduct a  
2 settlement conference, and declined to address how or whether mediation differed from  
3 traditional court-supervised settlement conferences.” (*Id.* at p. 542.) Furthermore, the *Jeld-Wen*  
4 Court of Appeal observed that “[t]he *Lu* decision provides no guidance on the legal issue  
5 presented in this petition because it did not address a trial court's authority to order parties to  
6 attend and pay for private mediation.” (*Id.*) Here, as in *Lu*, the moving parties seek to have the  
7 Court appoint Mr. Dendy as a referee to conduct mandatory settlement conferences, not private  
8 mediation as in the *Jeld-Wen* case.

9  
10 V. THE COURT SHOULD BE INVOLVED IN THE SETTLEMENT PROCESS AS  
11 THE COURT WILL ULTIMATELY HAVE TO APPROVE THE PARTIES’

12  
13 Any settlement or compromise involving a class action requires court approval after a  
14 hearing. (Cal. Rules of Ct., Rule 3.769.) To approve a class action settlement, the court must  
15 find that the settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48  
16 Cal.App.4<sup>th</sup> 1794, 1801.) Ultimately, the Court will have to hear evidence and argument on a  
17 proposed settlement. (*Bell v. American Title Ins. Co.*) (1991) 226 Cal.App.3rd 1589, 1599-  
18 1602.)

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VI. CONCLUSION

Rosamond Community Services District and Los Angeles County Waterworks District No. 40 respectfully request that the Court appoint Mr. Dendy as a settlement referee to conduct mandatory settlement conferences to efficiently facilitate a settlement. Efficient settlement is in the best interest of the all parties and in the public interest of the residents and businesses in the Antelope Valley. Furthermore, appointing a settlement referee, subject to court supervision should accelerate the settlement process which would be in all parties' interest.

Dated: August 13, 2007

BEST BEST & KRIEGER LLP

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 August 13, 2007, I served the within document(s):

**REPLY TO COMMENTS AND OPPOSITION RE MOTION FOR APPOINTMENT OF BILL B. DENDY AS MANDATORY SETTLEMENT REFEREE**

- ☒ 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 13, 2007, at Irvine, California.

  
Kerry V. Keefe