

BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
JEFFREY V. DUNN, Bar No. 131926
STEFANIE HEDLUND MORRIS, Bar No. 239787
18101 VON KARMAN AVENUE, SUITE 1000
IRVINE, CALIFORNIA 92612
TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
Attorneys for Cross-Complainant
LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103

OFFICE OF COUNTY COUNSEL
COUNTY OF LOS ANGELES
JOHN F. KRATTLI, Bar No. 82149
COUNTY COUNSEL
WARREN WELLEN, Bar No. 139152
PRINCIPAL DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-8407
TELECOPIER: (213) 687-7337

Attorneys for Cross-Complainant LOS ANGELES
COUNTY WATERWORKS DISTRICT NO. 40

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

**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

**NOTICE OF MOTION AND MOTION
FOR AN ORDER (1) REQUIRING
DISCLOSURE OF EX PARTE
COMMUNICATIONS; (2) PRECLUDING
INFORMATION PROTECTED BY THE
MEDIATION CONFIDENTIALITY AS
EVIDENCE; (3) ENJOINING FURTHER
DISCLOSURE OF INFORMATION
PROTECTED BY THE MEDIATION
PRIVILEGE; AND (4) TO SHOW CAUSE
RE IMPOSITION OF SANCTIONS AND
OTHER APPROPRIATE RELIEF**

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE, SUITE 400
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: April 29, 2013
Time: 9:00 a.m.
Dept.: Room 1515

NOTICE AND MOTION

TO ALL PARTIES AND ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on April 29, 2013, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-captioned court located at located at 111 North Hill Street, Los Angeles, CA 90012, Defendant and Cross-Complainant Los Angeles County Waterworks District No. 40 ("District No. 40") will and does hereby move this court for an order that:

1. All parties and their respective attorneys disclose any and all information concerning the letter attached hereto as Exhibit A to the Declaration of Jeffrey V. Dunn;

2. All parties and their respective attorneys disclose any and all information concerning any ex parte communication with the court including, but not limited to, any communication of any kind that relates or refers to mediation with the Honorable Justice Ron R. Robie;

3. An order to preclude as evidence of any information protected by the mediation confidentiality;

4. An order to enjoin all parties and their attorneys from disclosing information protected by the mediation confidentiality; and

5. An order to show cause re imposition of sanctions or other appropriate relief for violations of this Court's order on December 11, 2012.

District No. 40 brings this motion pursuant to the court's power to control its cases and the conduct of litigants appearing before it, and to sanction parties for bad faith litigation conduct and violation of its orders. (*See* Code Civ. Proc., §§ 128, subd. (a), 177, subd. (2), and 177.5; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758; *Peat v. Superior Court* (1988) 200 Cal.App.3d 272, 288.)

\\

\\


\\

1 The motion is based on this notice, the accompanying memorandum of points and
2 authorities, the declaration of Jeffrey Dunn, pleadings and papers on file in this case, and on such
3 further oral and documentary evidence as may be presented at the time of the hearing of this
4 matter.

5 Dated: March 22, 2013

BEST BEST & KRIEGER LLP

7 By


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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Exhibit "A" to the attached Declaration of Jeffrey V. Dunn is a purported landowner party letter sent to Los Angeles County Waterworks District No. 40's legal counsel including associate attorney Ms. Stefanie Hedlund Morris. The letter requires no explanation here as to why this Motion is brought before the court. It suffices that legal counsel have a duty to bring to the court's attention the letter indicating ex parte communications with the court as well as the harassing nature of the letter.

Sadly, the letter represents the too often vituperative statements by landowners and their attorneys throughout these proceedings. The mediation before Justice Ron R. Robie devolved into repeated disparaging attacks by landowner parties upon the Public Water Suppliers.

There can be no dispute that a court has a duty to ensure mediation confidentiality, to prevent improper ex parte communications, and to provide appropriate relief to those parties who are subject to harassment and violations of the mediation confidentiality.

II. THIS COURT SHOULD ORDER ALL PARTIES AND ATTORNEYS TO PROVIDE ANY AND ALL INFORMATION CONCERNING THE ANONYMOUS LETTER FIRST RECEIVED ON DECEMBER 21, 2012

Courts have inherent power to manage the cases before them for an orderly and expeditious disposition. Section 128 of the Civil Code of Procedure provides:

(a) Every court shall have the power to do all of the following: . . .

(3) To provide for the orderly conduct of proceedings before it, or its officers.

(4) To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein.

(5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto. . . .

(8) To amend and control its process and orders so as to make them conform to law and justice. . . .

(Code Civ. Proc., § 128, subd. (a).) A court's inherent power includes the ability to sanction a party and/or its counsel for bad faith litigation conduct. (*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 744-45, 758 [court has the inherent power to terminate a litigation for a party's bad faith conduct that created the false impression that documents were not confidential]; *Peat v. Superior Court* (1988) 200 Cal. App. 3d 272, 288.) "[T]he inherent power of courts to control and prevent abuses in the use of their process 'does not depend upon constitutional or legislative grant.'" (*Peat, supra*, 200 Cal. App. 3d at 287 [citing *Arc Investment Co. v. Tiffith* (1958) 164 Cal. App. 2d Supp. 853, 856].)

The letter at issue was sent to each of the following individuals in the mail:

John Krattli, County Counsel for County of Los Angeles.

Warren Wellen, Principal Deputy County Counsel for County of Los Angeles.

Stefanie Hedlund Morris, Best Best & Krieger LLP.

Eric Garner, Best Best & Krieger LLP.

Jeffrey V. Dunn, Best Best & Krieger LLP.

(Declaration of Jeffrey V. Dunn ["Dunn Decl."], ¶ 2.)

Given the long-standing and increasing rancorous and vitriolic nature of landowner parties' attacks upon District No. 40 and other Public Water Suppliers, it is overdue for the court to firmly and unequivocally end the harassment. Additionally, a court order should be issued to all parties for complete disclosure of any and all information concerning the letter.

III. MEDIATION STATEMENTS AND WRITINGS ARE SUBJECT TO STRICT CONFIDENTIALITY AND THIS COURT SHOULD ORDER ALL PARTIES AND ATTORNEYS TO DISCLOSE ALL INFORMATION CONCERNING EX PARTE COMMUNICATION WITH THE COURT REGARDING THE MEDIATION

In addition to the harassing and threatening nature of the letter, it states landowner parties have made ex parte communications with the court concerning the mediation. As the court is aware, District No. 40 has repeatedly objected to the landowners' mediation disclosures but they

1 continue to violate mediation confidentiality by providing one-sided, incomplete and self serving
2 statements to influence and potentially mislead the court.

3 California law has long protected mediation confidentiality. Section 1121 of the Evidence
4 Code provides:

5 Neither a mediator nor anyone else may submit to a court or other
6 adjudicative body, and a court or other adjudicative body may not
7 consider, any report, assessment, evaluation, recommendation, or
8 finding of any kind by the mediator concerning a mediation
9 conducted by the mediator, other than a report that is mandated by
10 court rule or other law and that states only whether an agreement
11 was reached, unless all parties to the mediation expressly agree
12 otherwise in writing, or orally in accordance with [Evidence Code]
13 Section 1118. The court may, in furtherance of justice, and on any
14 terms as may be proper, allow a party to amend any pleading or
15 proceeding by adding or striking out the name of any party
16 The court may likewise, in its discretion, after notice to the adverse
17 party, allow, upon any terms as may be just, an amendment to any
18 pleading or proceeding in other particulars. . . .

19 Section 1119 of the Evidence Code provides:

20 Except as otherwise provided in this chapter:

21 (a) No evidence of anything said or any admission made for the
22 purpose of, in the course of, or pursuant to, a mediation or a mediation
23 consultation is admissible or subject to discovery, and disclosure of
24 the evidence shall not be compelled, in any arbitration,
25 administrative adjudication, civil action, or other noncriminal
26 proceeding in which, pursuant to law, testimony can be compelled
27 to be given.

28 (b) No writing, as defined in [Evidence Code] Section 250, that is
prepared for the purpose of, in the course of, or pursuant to, a
mediation or a mediation consultation, is admissible or subject to
discovery, and disclosure of the writing shall not be compelled, in
any arbitration, administrative adjudication, civil action, or other
noncriminal proceeding in which, pursuant to law, testimony can be
compelled to be given.

(c) All communications, negotiations, or settlement discussions by
and between participants in the course of mediation or a mediation
consultation shall remain confidential.

Despite the clear and long-standing strict mediation proceedings confidentiality, certain
landowner parties violated the mediation confidentiality and the letter to District No. 40 is further
proof of an increasing impunity. This motion, in part, asks for a court order for all parties and
their attorneys to disclose all information concerning any ex parte communication with the court

1 including, but not limited to, any communication of any kind that relates or refers to mediation
2 with the Justice Robie and for an order enjoining further mediation confidentiality violations.

3 **IV. THE LETTER IS YET ANOTHER INSTANCE OF LANDOWNER VIOLATIONS**
4 **OF THE MEDIATION CONFIDENTIALITY AND THE COURT SHOULD**
5 **PRECLUDE AS EVIDENCE INFORMATION PROTECTED BY MEDIATION**
6 **CONFIDENTIALITY AND ENJOIN FURTHER DISCLOSURES**

7 Courts recognize the confidentiality imperative in mediation, and there is established
8 precedent for imposing sanctions for breaches of mediation confidentiality. (*Peat v. Superior*
9 *Court, supra*, 200 Cal. App. 3d at p. 288 [court has inherent authority to preclude evidence as a
10 sanction for abuse of litigation process]; *see also, Rojas v. Superior Court* (2004) 33 Cal.4th 407,
11 423 [material protected by the mediation privilege is not subject to discovery even if “good
12 cause” exists for its disclosure].) As the California Supreme Court noted, the mediation privilege
13 is crucial to:

14 a candid and informal exchange regarding events in the past
15 This frank exchange is achieved only if the participants know that
16 what is said in the mediation will not be used to their detriment
17 through later court proceedings and other adjudicatory processes. . . .
18 To carry out the purpose of encouraging mediation by ensuring
19 confidentiality, the statutory scheme, which includes sections 703.5,
20 1119, and 1121, unqualifiedly bars disclosure of communications
21 made during mediation

22 (*Foxgate Homeowners’ Assn. v. Bramalea California, Inc.* (2001) 26 Cal.4th 1, 14-15 [citations
23 and quotation marks omitted].)

24 The Legislature views violations of mediation confidentiality as serious offenses that any
25 reference to mediation constitutes grounds for a new trial (or a mistrial). (Code Civ. Proc., §
26 1775.12 [“Any reference to the mediation or the statement of nonagreement filed pursuant to
27 Section 1775.9 during any subsequent trial shall constitute an irregularity in the proceedings of
28 the trial for the purposes of Section 657.”]; *see also*, Code Civ. Proc., § 657 [“The verdict may be
vacated and any other decision may be modified or vacated, in whole or in part . . . for . . . : 1.
Irregularity in the proceedings of the court, jury or adverse party, or any order of the court or
abuse of discretion by which either party was prevented from having a fair trial.”].)

In these coordinated and consolidated cases, District No. 40 agreed to mediation because
it sought to explore an informal resolution in a confidential manner. Strict confidentiality is

1 essential to an effective mediation process. Had District No. 40 known that the Bolthouse party,
2 its legal counsel and other landowner parties were going to distribute District No. 40's mediation
3 positions, statements and documents, or otherwise discuss mediation positions with the court,
4 District No. 40 would not have participated in the mediation with Justice Robie.

5 In fact, District No. 40 insisted on complete confidentiality to safeguard against what has
6 now occurred, and given Bolthouse's patent violation of the mediation confidentiality, District
7 No. 40 cannot envision a circumstance where it will participate in further settlement discussions
8 with Bolthouse and those parties who joined in its mediation confidentiality violations.
9 Bolthouse and other landowner parties have removed any further meaningful opportunity to
10 mediate or otherwise hold settlement discussions and should face consequences for their willful
11 and reckless conduct.

12 District No. 40 respectfully request for a court order precluding any information protected
13 by the mediation confidentiality to be considered as evidence and an order enjoining further
14 mediation confidentiality violations.

15 **V. THE LANDOWNERS VIOLATED THE COURT'S ORDER UPHOLDING**
16 **MEDIATION CONFIDENTIALITY AND SHOULD BE SANCTIONED**

17 This Court has authority to "compel obedience to [its] lawful orders" and may issue
18 monetary sanctions for a person's violation of its order. (Code Civ. Proc §§ 177, subd. (2), 177.5
19 [courts may order sanctions up to \$1,500 per violation of a court order]; *see also, In re Marriage*
20 *of Davenport* (2011) 194 Cal.App.4th 1507, 1521-22 [upholding trial court's decision to issue
21 sanctions based on, among other things, counsel's multiple "references to what was presented and
22 said in mediation in violation of Evidence Code § 1119"].)

23 During the December 11, 2011 Case Management Conference, Bolthouse and other
24 landowner parties violated mediation confidentiality yet again by disclosing mediation
25 communications. Upon objection by Mr. Dunn, this Court ordered the parties not to disclose
26 confidential mediation communications. Despite this unequivocal order, the landowners
27 proceeded to reveal additional information protected by the confidentiality in contempt of the
28 order. Such flagrant violation of this court's order should not be tolerated. For each of the

landowners' violations, the Court should issue an order to show cause re imposition of monetary sanctions and other appropriate relief as to Bolthouse and all parties who "joined" in the Bolthouse Case Management Conference statements.

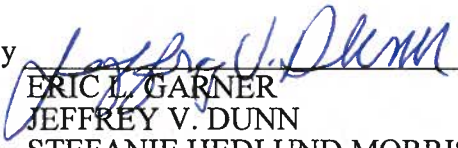
VI. CONCLUSION

For the reason herein stated, Los Angeles County District No. 40 respectfully requests the motion be granted and for further relief as determined appropriate by the court.

Dated: March 22, 2013

BEST BEST & KRIEGER LLP

By


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

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare as follows:

1. I am a partner with the law firm of Best, Best & Krieger LLP, counsel for Cross-defendant and Appellant Los Angeles County Waterworks District No. 40. I have personal knowledge of the facts stated herein and if called upon to do so, I could and would competently testify to these facts.

2. Attached as Exhibit "A" hereto is a redacted copy of a letter On December 11, 2012, the Court held a Case Management Conference. The Court has been provided with a no redacted copy. It was sent to and received by each of the following individuals in the mail:

John Kratli, County Counsel for County of Los Angeles.

Stefanie Hedlund Morris, Best Best & Krieger LLP.

Eric Garner, Best Best & Krieger LLP.

Jeffrey V. Dunn, Best Best & Krieger LLP.

Ms. Hedlund is employed as an associate attorney at Best Best & Krieger LLP. It brings this motion, in part, because of the harassing and threatening letter to its employee.

3. On December 11, 2012, the Court held a Case Management Conference. Both during the Conference and in case filings before the Conference, the Bolthouse party provided confidential mediation information to the Court. Other landowner parties "joined" the Bolthouse Properties case filings disclosing confidential mediation information.

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

Executed this 22nd day of March, 2013, at Los Angeles, California.



Jeffrey V. Dunn

26345.00000\7794197.4

EXHIBIT “A”

1
2 Los Angeles County Waterworks District No. 40 opposes the ex parte application by
3 Bolthouse Properties, et al. On its face, the application is an improper request for a trial
4 continuance. A trial continuance cannot be granted from an ex parte application without proper
5 declarations showing appropriate good cause. (Cal. Rules of Court, Rule 3.1332.) Here, the ex
6 parte hearing requests for both a trial continuance and for stay of court ordered-discovery have no
7 supporting declarations. There is nothing properly before the court to base or otherwise consider
8 the improper requests. Instead, there is only argument by a small, but tightly unified, group of

You can all suck our "large land owner [REDACTED]" Most of our group is small family farms and you know it. Most importantly Komar and Robie know it because I send him letters like this all the time and they are starting to see through your BS. The tide is turning and we are fully funded and ready to kick your little [REDACTED]. My family has owned that land for over 80 years and you are not going to wipe out the only thing we have to retire on. Where the [REDACTED] were you when we almost lost it in the depression? Where were you when my grandfather died and left three women at home to pay off all the debt? We all know you sold the purveyors a bill of goods and we are going to make sure every city employee that took your bait is going to lose their job. We will expose everyone

15 hundreds of other others private landowners.

16 Los Angeles County Waterworks District No. 40, again, hereby states its objections to the
17 Bolthouse Properties and other large landowner parties disclosing what took place during the
18 mediation process before the Honorable Ron R. Robie, Justice of the Court of Appeal. The
19 previous and continuing references to the mediation violate applicable mediation confidentiality
20 law including Evidence Code sections 1119 and 1121.

21 Bolthouse Properties, together with its other large private landowner party allies, are
22 either attempting to improperly persuade the court on its decision for the Phase 4 trial and further
23 proceedings, or cause the disqualification of the trial court judge. It is beyond reasonable dispute
24 that the Bolthouse and its allies want the disqualification of the current trial court judge because
25 they have filed not one, but two, improper preemptory challenges under Code of Civil Procedure
26 section 170.6.

27 The ex parte requests should be denied. They are nothing more than the repeated
28 arguments in the Court's hearing last week. A reasonable person would conclude the latest ex

R LLP
F. SUITE 1000
2612

1 parte requests are to keep the Court from discovering how much groundwater the ex parte
2 applicants really use, and that it was not for reasonable and beneficial uses in the arid Antelope
3 Valley. Bolthouse and its few but large landowner party allies believe they can stand united and
4 thereby convince the Court to approve their partial settlement and to stop the necessary
5 comprehensive adjudication of the groundwater rights. They are wrong. The Antelope Valley
6 Groundwater Basin is, and has been for decades, in an overdraft condition. The large landowner
7 parties do not own groundwater; it belongs to the people of the State of California. (*City of Santa*
8 *Maria v. Adam* (2012) 211 Cal.App.4th 266, 277-278.)

9 The large landowner parties can no longer continue to pump groundwater for free and
10 without any limitation. They must show whether they used, and have used, groundwater for a
11 reasonable and beneficial use in the Antelope Valley.
12

Are you people drunk? Perhaps utilizing that medical marijuana card to much? What the [REDACTED] does pumping water to GROW FOOD on THE LAND WE HAVE OWNED FOR 80 YEARS have to do with you? Yes, the water does belong to the people of So Cal but why do you think you can steal it? You have to pay for all of the other water you provide don't you? Oh no, wait..... you don't. Because you have wells all over the Antelope Valley and you are pumping now. It's those exact wells that are in overdraft, not our wells. You are the ones over pumping. And when we prove to you we are pumping for "reasonable and beneficial use (your words)" are you then going to then pay us for the water? Um..... NO! No you won't. You still want to steal it.

You better sharpen you swords [REDACTED] because the tide is changing and we have Komar's ear now. He was dirty for you earlier, now he's pissed off you have been unwilling to settle and we are betting he is going to spank you. Let's go to trial, put all of this in front of a jury and see what they say. "The good of the many outweighs the good of the few" - Karl Marx.

[REDACTED] Prepare to get [REDACTED]

26
27
28

RECEIVED

DEC 26 2012

BEST BEST & KRIEGER

"RVQ"

2ND BEST, 3RD BEST & KRIEGER

ATTN. ERIC GARNER

18101 VON KARMAN AVE / STE 1000

IRVINE, CA 92612

32612+0164

LOS ANGELES CA 900

20 DEC 2012 PM 1:17



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 22, 2013, I served the within document(s):

NOTICE OF MOTION AND MOTION FOR AN ORDER (1) REQUIRING DISCLOSURE OF EX PARTE COMMUNICATIONS; (2) PRECLUDING INFORMATION PROTECTED BY THE MEDIATION CONFIDENTIALITY AS EVIDENCE; (3) ENJOINING FURTHER DISCLOSURE OF INFORMATION PROTECTED BY THE MEDIATION PRIVILEGE; AND (4) TO SHOW CAUSE RE IMPOSITION OF SANCTIONS AND OTHER APPROPRIATE RELIEF

- ☒ 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 22, 2013, at Irvine, California.


Kerry V. Keefe