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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:
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
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

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

**MOTION IN LIMINE NUMBER ONE BY
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40 TO
PRECLUDE EVIDENCE RE DECIDED
ISSUES INCLUDING RETURN FLOW
CONTRIBUTION TO BASIN SAFE YIELD**

[Filed or lodged concurrently with Request for
Judicial Notice]

MOTION IN LIMINE NUMBER ONE

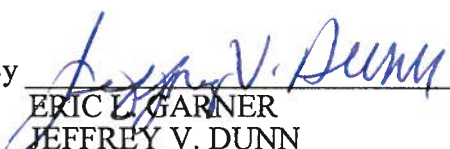
Los Angeles County Waterworks District No. 40 ("District No. 40") moves this Court for an order precluding parties from offering any testimony, documents or other evidence related to issues decided in prior phases of this action, including the safe yield and the amount of return flows. The motion is made pursuant to Evidence Code Section 352 and the inherent authority of the courts to manage litigation, and is based on the grounds that re-litigating a decided issue will be both severely prejudicial and necessitate undue consumption of time.

This Motion is based on the attached Memorandum of Points and Authorities, the accompanying Request for Judicial Notice filed concurrently therewith, and on any other matters properly before the Court.

Dated: March 29, 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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The purpose of Phase Three was to determine whether the Antelope Valley Water Basin is in a state of overdraft and if so, the amount of safe yield. (Request for Judicial Notice (“RJN”), Ex. HH at p. 3.) After hearing multiple days of testimony from various experts and reviewing numerous exhibits over the course of four months, this Court found that the Basin is in a state of overdraft and that the safe yield for the Basin is estimated to be 110,000 acre feet a year. (RJN, Exs. AA to GG & HH at pp. 3 & 9.) As the Court noted in its Statement of Decision, the amount of safe yield is determined only after the Court ascertained the average amount of recharge from all sources, including return flows. (RJN, Ex. HH at p. 7.)

District No. 40 is informed and believes that during Phase Four, other parties will attempt to re-litigate issues decided during Phase Three and to introduce evidence disputing the amount of return flows. To allow any party to present such evidence or to re-try the decided issues will be severely prejudicial, unduly time consuming, and further delay the litigation process.

II. ARGUMENT

Courts have “fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation before them.” (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) Additionally, Evidence Code section 352 provides the court “may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) *necessitate undue consumption of time* or (b) *create substantial danger of undue prejudice*, of confusing the issues, or of misleading the jury.” (Evid. Code § 352 [emphasis added].)

As shown by the accompanying request for judicial notice, the Court heard extensive evidence of the return flow contributions by the parties’ use of State Water Project water and other supplemental (non-native) water supplies. After providing all parties with an opportunity to present evidence on the amount of return flows, the Court made a determination of the safe yield which includes the return flows percentage estimates from supplemental, non-native water supplies. (See *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 301-303 [expert’s

HOA-967103.1

percentage return flow estimates are sufficient evidence of return flow amounts.))]

The Court received evidence on return flows and determined their amounts, because they are a component of a court-determined safe yield. (See *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278-279 [court included return flows in the safe yield determination.]) Stated simply, the Court could not have properly determined the safe yield in the Phase 3 trial without having determined the amount of return flows from imported water and native water in the Basin's safe yield.

There are at least three reasons why re-litigation of the return flow contribution to the safe yield would be both severely prejudicial to the parties and would consume undue time in already extraordinarily lengthy and costly proceedings.

First, while Phase Three determined the factual issue of the return flow amounts, Phase Four concerns a legal issue concerning groundwater rights – who is entitled to the return flows. As the Court has already factually determined the return flow amount, evidence again on this decided issue is unnecessary, and any additional evidence will merely be cumulative and without much probative value. (See *Rosener v. Sears, Roebuck & Co.* (1980) 110 Cal.App.3d 740, 756 [“trial court did not abuse its discretion in excluding such expert testimony, which was only marginally relevant, and at best repetitive and unduly time consuming.”]; *Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 554 [trial court did not abuse its discretion by excluding cumulative evidence].) Presenting the same or new evidence to litigate a settled issue will accomplish nothing, consume time, and further delay resolution in this action. (See *Sanchez v. Bay General Hospital* (1981) 116 Cal.App.3d 776, 794 [matters that “could consume enormous amounts of time to no enlightenment on the key issues before the court” may be excluded].)

Second, to allow evidence on a decided issue will defeat one of the primary purposes of splitting this action into different phases – efficient resolution of disputes. (Code Civ. Proc., §1048, subd. (b) [“The court, in furtherance of convenience or to avoid prejudice, or *when separate trials will be conducive to expedition and economy*, may order a separate trial of any cause of action, including a cause of action asserted in a cross-complaint, or of any separate issue or of any number of causes of action or issues. . . .”] [emphasis added

HOA.967103.1

1 Finally and most important, the primary expert witness on return flows was Mr. Joseph
2 Scalmanini. As the Court is aware, he was diagnosed with amyotrophic lateral sclerosis, more
3 commonly known as Lou Gehrig's disease, shortly before the Phase Three trial. The Court went
4 to great lengths to allow Mr. Scalmanini to testify and be cross-examined in the Phase Three trial.
5 He cannot possibly testify again concerning return flows. To allow a re-litigation of the return
6 flow contributions to the safe yield, would be severely prejudicial to the parties who retained Mr.
7 Scalmanini and whose work was conducted over many years at any extraordinary cost.

8
9 **III. CONCLUSION**

10 Based on the foregoing, District No. 40 respectfully requests that the Court preclude any
11 party from offering any evidence related to issues decided in prior phases of this action,
12 especially evidence relating to the amount of return flows. Additionally, District No. 40 joins the
13 Phase 4 trial motions in limine by Rosamond Community Services District and Quartz Hill Water
14 District.

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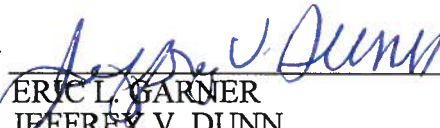
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1 Although a resolution of the legal issue concerning the return flow rights can be decided
2 by the Court following briefing and oral argument, there can be no reasonable dispute that
3 District No. 40 and other purchasers of State Water Project are entitled the return flows attributed
4 to their respective supplemental water purchases. (E.g., *City of Santa Maria, supra*, 211
5 Cal.App.4th at p. 301 [retail purchasers of State Water Project water are entitled to its return
6 flows. “The fact that spread water is commingled with other ground water is no obstacle to the
7 right to recapture the amount by which the available conglomerated ground supply has been
8 augmented by the spreading.” (quoting *San Fernando, supra*, at pp. 263-264.))

9
10 Dated: March 29, 2013

BEST BEST & KRIEGER LLP

11
12
13 By


ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
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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 29, 2013, I served the within document(s):

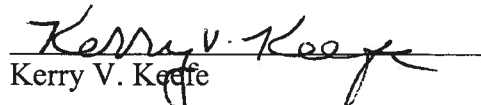
**MOTION IN LIMINE NUMBER ONE BY LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40 TO PRECLUDE EVIDENCE RE DECIDED
ISSUES INCLUDING RETURN FLOW CONTRIBUTION TO BASIN SAFE YIELD**

- ☒ 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 29, 2013, at Irvine, California.


Kerry V. Keefe