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LOS ANGELES COUNTY WATERWORKS
DISTRICT NO. 40

EXEMPT FROM FILING FEES
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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;

RICHARD WOOD, on behalf of himself and
all other similarly situated v. A.V. Materials,
Inc., et al., Superior Court of California,
County of Los Angeles, Case No. BC509546.

Judicial Council Coordination Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO MOTION OF WOOD
CLASS SETTLING DEFENDANTS TO
BE RELIEVED OF ALL COURT
ORDERS FOR PAYMENT OF COURT-
APPOINTED EXPERT FEES AND
COSTS

*[Filed concurrently with Declaration of
Jeffrey V. Dunn]*

1 Los Angeles County Waterworks District No. 40 ("District No. 40") opposes Defendants
2 Rosamond Community Services District, City of Lancaster, Palmdale Water District and Phelan
3 Hills Community Services District's ("collectively, "Settling Defendants") Motion to Be Relieved
4 of All Court Orders for Payment of Court-Appointed Expert Fees and Costs ("Motion") because
5 the Court appointed the Wood Class's expert for the purpose of determining Wood Class's water
6 rights, the Partial Settlement entered into between the Wood Class and the Settling Defendants
7 does not determine the Wood Class's water rights, and the court-appointed expert still needs to
8 continue his work regardless of the Partial Settlement.

9 **I. THE COURT APPOINTED THE WOOD CLASS'S EXPERT FOR THE**
10 **PURPOSE OF DETERMINING WOOD CLASS'S WATER RIGHTS**

11 In its Motion for an Order Authorizing the Court-Appointed Expert Witness Work ("Work
12 Authorization Motion"), the Wood Class argued that the expert's work purpose is to estimate
13 groundwater pumping for the self-help defense and reasonable and beneficial use of such water.
14 (Declaration of Jeffrey V. Dunn ("Dunn Decl."), Ex. C at pp. 4-5.) The Wood Class
15 acknowledged in the Work Authorization Motion that even if the Wood Class settled with all of
16 the Public Water Suppliers, the expert still must continue his work and provide testimony or
17 report for "an evidentiary prove-up hearing" of water rights. (Dunn Decl., Ex. C at p. 6.) With a
18 second Wood Class action lawsuit against private and public landowner parties, the expert
19 witness work will be used in the Wood Class determination of water rights as against all parties.

20 On December 11, 2012, after hearing arguments regarding the Work Authorization
21 Motion, the Court authorized its appointed expert to estimate groundwater use by the Wood Class
22 members. (Dunn Decl., Ex. B at p. 1 & Ex. C at Ex. 5.) The Court also ordered only ten public
23 water suppliers to pay the court-appointed expert his fees and costs in equal amounts. (Dunn
24 Decl., Ex. B at pp. 1-2.) This order was subsequently amended on September 6, 2013 by
25 stipulation with District No. 40 having to pay most of the expert's fees and costs. (Dunn Decl.,
26 Ex. D.) The September 6, 2013 stipulation and amended order does not alter the scope of the
27 expert's work.
28

1 **II. PARTIAL SETTLEMENT DOES NOT DETERMINE THE WOOD CLASS'**
2 **WATER RIGHTS AND DOES NOT ALTER THE REQUIREMENTS OF AN**
3 **"EVIDENTIARY PROVE-UP", WHICH REQUIRES TESTIMONY OR REPORT**
4 **OF THE COURT-APPOINTED EXPERT**

5 The Partial Settlement does not provide the Wood Class with any water rights.
6 (Declaration of Michael McLachlan in Support of Final Approval of Partial Settlement
7 ("McLachlan Decl."), Ex. 2 at p. 2 ["Does this settlement give me a water right? No."]; see Dunn
8 Decl., Ex. A at 52:12-16 [Class counsel represented at the October 25, 2013 hearing that the class
9 is not asking the Court to approve an allocation number as being reasonable]; Motion for Final
10 Approval of Partial Settlement at p. 5 [Partial Settlement "does not limit the Court's ability to rule
11 on the Class' ultimate water rights, the Settling Defendants' water rights. . . ."].)

12 Water rights cannot be determined without evidence as to their reasonable and beneficial
13 use, which the Wood Class has not yet done in these coordinated proceedings. (See *Tulare*
14 *Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* (1935) 3 Cal.2d 489, 524-525; Cal. Const.,
15 art. X, § 2.) It is not possible to determine water rights for some pumpers and not others because
16 the reasonableness determination depends upon all other parties' groundwater uses. Stated
17 simply, the Wood Class reasonable and beneficial use of groundwater cannot be resolved without
18 the Court considering the reasonableness of all groundwater uses. Consequently, the testimony or
19 report of the court-appointed expert is required, not just to establish the Wood Class's
20 groundwater amounts and their reasonable and beneficial use, but to determine the reasonableness
21 of all water uses, including those of the Settling Defendants.

22 **III. FAIRNESS REQUIRES THE SETTTLING DEFENDANTS TO CONTINUE TO**
23 **PAY THEIR ALREADY REDUCED SHARE OF THE EXPERT'S FEES AND**
24 **COSTS**

25 The Settling Defendants claim that "it is neither fair nor equitable to force the Settling
26 Defendants to continue to incur fees and costs when they have elected to settle and resolve their
27 claims." (Motion at p. 2.) However, the Settling Defendants do not clarify how the Partial
28 Settlement, which does not establish water rights or reasonable beneficial use, alters the scope of
 the expert's work or reduces his fees and costs. If the Partial Settlement has no impact on
 expert's work, the Partial Settlement cannot be used to justify Settling Defendants' unreasonable

1 request to be relieved of their obligations to pay the expert's fees and costs.

2 Fairness requires that all parties who benefit from the expert's work share a portion of his
3 fees and costs. Unless the Wood Class abandons its water claims, an evidentiary hearing on the
4 Wood Class's groundwater pumping and reasonable and beneficial use of that water is required as
5 to all parties. As water rights are correlative, the Court cannot adjudicate groundwater rights of
6 any of the water suppliers without determining the Wood Class water rights as against all parties.
7 (*Orange County Water Dist. v. Colton* (1964) 226 Cal.App.2d 642, 647 ["Since, under the law, all
8 overlying rights are correlative, in order to make a complete determination every parcel from
9 which the right was purported to have been granted would have to be analyzed to determine its
10 beneficial requirement of water in comparison with all other overlying parcels."].) As the court-
11 appointed expert's testimony or report is necessary to determine the Settling Defendants' water
12 rights, fairness requires that they share a portion of the expert's fees and costs.

13 **IV. THE PARTIAL SETTLEMENT MAY NOT RESOLVE ALL DISPUTES**
14 **BETWEEN THE SETTLING PARTIES**

15 Contrary to the Settling Defendants' contention, their decision to settle with the Wood
16 Class may not "fully and finally resolve their claims against one another." (Motion at p. 2.) At
17 the crux of the Partial Settlement is the Settling Defendants' agreement that they will not "contest
18 that each Wood Class Member may pump up to 3 acre-feet per year assessment free, subject to
19 Court approval, and that such use is subject to a rebuttable presumption that it is domestic until
20 established otherwise by competent evidence." (McLachlan Decl., Ex. 1 at p. 9.) In other words,
21 Settling Defendants will not challenge evidence introduced by the Wood Class that each class
22 member has pumped up to 3 acre-feet per year of water. As the court-appointed expert has not
23 completed his analysis, it is unknown at this time whether the expert's findings will suggest a
24 higher groundwater pumping by the Wood Class members. Until the expert completes his
25 analysis, it is unclear if all disputes between the settling parties are truly resolved. Consequently,
26 a determination now as to whether the Settling Defendants should be relieved of their duty to
27 compensate the expert for his fees and costs is premature.

1 **V. CONCLUSION**

2 For the reasons stated above, District No. 40 respectfully requests the Court to deny the
3 Motion.

4
5 Dated: December 23, 2013

BEST BEST & KRIEGER LLP

6
7 By


ERIC L. GARNER

JEFFREY V. DUNN

Attorneys for 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 December 23, 2013, I served the within document(s):

LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO
MOTION OF WOOD CLASS SETTling DEFENDANTS TO BE RELIEVED OF ALL
COURT ORDERS FOR PAYMENT OF COURT-APPOINTED EXPERT FEES AND
COSTS

- ☒ 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 December 23, 2013, at Irvine, California.


Kerry V. Keefe