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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

DECLARATION OF JEFFREY DUNN IN
SUPPORT OF LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40'S
OPPOSITION TO *EX PARTE*
APPLICATION TO CONTINUE RETURN
FLOW QUANTITY PORTION OF PHASE
5 TRIAL

*[Filed concurrently with Opposition to Ex
Parte Application to Continue Return Flow
Quantity Portion of Phase 5 Trial]*

Date: January 30, 2014

Time: 8:30 a.m.

Dept.: Department 1 (via Courtcall)

Trial Date: February 10, 2014 (Phase V)

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn, declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 ("District No. 40").

3. On Thursday, January 16, 2014, I attended the deposition of Dr. Dennis Williams. His deposition was taken at the Los Angeles office of Veritext court report services. I represented Dr. Dennis Williams during the deposition because he is a designated expert witness by District No. 40 and other public water supplier parties.

4. Dr. Williams brought approximately 6 banker's boxes of written materials on a small utility trailer to his deposition. The written materials were his entire case file's written documents. He also brought a computer disc containing his entire case file in electronic format.

5. Mr. McLachlan - who arrived 30 minutes late to the deposition - spent approximately 3 and 1/2 hours questioning Dr. Williams on his opinions and the basis for the opinions. Additionally, Dr. Williams was questioned for another approximately 3 and 1/2 hours by attorneys for Tejon (Mr. Robert Kuhs); AVGA (Mr. Fife); AVEK (Mr. McElhaney) and Phelan Pinion Hills District (Mr. Miliband.)

6. Dr. Williams answered all deposition questions concerning his opinions over the course of seven hours of questioning by the four landowner attorneys

7. During the deposition, Dr. Williams testified as to his use of the United States Geological Survey ("USGS") MODFLOW model. "MODFLOW is the USGS's three-dimensional (3D) finite-difference groundwater model. MODFLOW is considered an international standard for simulating and predicting groundwater conditions and groundwater/surface-water interactions." (<http://water.usgs.gov/ogw/modflow/>).

8. The MODFLOW model is publicly available on the USGS website. <http://water.usgs.gov/ogw/modflow/>

1 9. Dr. Dennis Williams is considered one of the preeminent experts in the use of the
2 USGS MODFLOW model. Dr. Williams has been a consultant to the United Nations and several
3 foreign governments. He is also a part-time research professor at the University of Southern
4 California, where he has taught graduate level courses in geohydrology and ground water
5 modeling since 1980. Dr. Williams is the author of numerous publications on ground water, and
6 was the principal author of the Handbook of Ground Water Development (John Wiley & Sons,
7 1990).

8 10. In his deposition, Dr. Dennis Williams testified on his use of the USGS
9 MODFLOW model. In summary, he took electronic data files prepared by the USGS for its long-
10 time use of the USGS MODFLOW model to analyze the overdraft condition of the Antelope
11 Valley groundwater basin area. The USGS has been analyzing the overdraft condition in the
12 Basin with the safe yield of 110,000 afy determined by the Court in the Phase 3 trial.

13 11. Dr. Williams also took data gathered by members of the Technical Committee – a
14 former committee of California’s leading and most experienced hydrologists formed to analyze
15 the Antelope Valley Groundwater Basin – and used the data as part of the input data for his
16 USGS MODFLOW modeling work.

17 12. Dr. Williams’s opinions were not based solely on his use of the USGS
18 MODFLOW model but also included his peer review of the Phase 3 trial testimony by expert
19 witnesses Joseph Scalmanini, Mark Wildermuth, and Tim Durbin.

20 13. Dr. Williams had conducted his own independent work and analysis which
21 included his use of the USGS MODFLOW model. In detailed and extensive testimony, Dr.
22 Williams explained how he took electronic data from the USGS and from Technical Committee
23 members, respectively, and used that data in a calibrated USGS MODFLOW model.

24 14. The MODFLOW electronic files comprise an estimated 17 gigabytes of data. The
25 data is so extensive that it requires special processing for making computer disk copies at my law
26 office for other counsel. The files are too large to transmit via email. The files are too
27 voluminous to print or scan for posting on the court’s website. This is one reason why these
28 electronic files were not posted a few days in advance of the deposition on the court’s website or

1 with Dr. Williams at his deposition. And no other expert has provided his or her files before the
2 deposition with possibly one minor exception

3 15. During the deposition Dr. Williams indicated that the electronic input files were
4 not brought with him that day. I explained to the few attorneys present (Mr. McLachlan, Mr. Fife
5 and Mr. McElhaney) and on the phone (Mr. Miliand and Mr. Kuhs) that I would inquire as to
6 whether it would be permissible to release the electronic data files. As indicated above, some
7 electronic files were received directly from the USGS and it was unknown what restrictions were
8 in place on the use of the USGS files. For that reason, I indicated to the attorneys present that I
9 would get back to them as soon as we know what the status is of the files. Also, I indicated that if
10 one of the attorneys at the deposition needed to depose Dr. Williams about the electronic files, we
11 would make him available for deposition to answer those questions.

12 16. The following day, Friday, I was in court in San Jose for a hearing in the Santa
13 Maria Groundwater Adjudication. The following Monday was a legal holiday and my law office
14 was closed. The next day, Tuesday, January 21, 2014, I was able to contact Dr. Williams and
15 make arrangements for the electronic files to be copied and made available to counsel upon
16 request with their agreement not to modify the USGS input files.

17 17. The next day, Wednesday, January 22, 2014 – three business days after Dr.
18 Williams' deposition – I notified counsel that the electronic files were available for copying upon
19 agreement that the input files would not be modified. (The reason for not modifying the input
20 files is to prevent a party from claiming that the input files generated output differently than what
21 was generated by the USGS or by Dr. Williams.) Attached as **Exhibit A** is a true and correct
22 copy of an email that I sent to the attorneys present at Dr. Williams' deposition.

23 18. Later that same day, I had a telephone conversation with Mr. McLachlan. He had
24 basic questions about the model, the electronic files and the agreement to keep input files
25 unmodified. I answered his questions about the model, the electronic files and an agreement to
26 keep the USGS input files unchanged. We also discussed that he needed to review the computer
27 disc and his notes of the deposition, to determine what, if anything, he believed was not produced
28 by Dr. Williams in his deposition.

19. Attorney McLachlan posted a letter on Thursday, January 24, 2014. A true and correct copy of the letter is attached as **Exhibit B**.

20. I responded to his letter on Friday, January 24, 2014. A true and correct copy of the reply is attached as **Exhibit C**.

21. Mr. McLachlan responded on Monday, January 27, 2014. A true and correct copy of his letter is attached as **Exhibit D**.

22. At no time has Mr. McLachlan explained what, if anything, he could do with the input (or output) files. He has not designated an expert witness for the Phase 5 trial let alone an expert witness on the USGS MODFLOW model. Nonetheless, District No. 40 sent the input and output files to Mr. McLachlan's office on January 29, 2014.

23. No other attorney has requested the electronic files.

24. To my knowledge there is no other expert witness designated to run a calibrated USGS model at the safe yield of 110,000 afy.

25. The electronic files are and have been available since Wednesday, January 22, 2014 – three business days after the deposition of Dr. Williams. No attorney has asked for a copy of the files except for Mr. McLachlan.

26. Despite the apparent urgency of an ex parte application, the deposition transcript for Dr. Williams' deposition is not yet available because not one of the questioning attorneys asked for an expedited preparation of the deposition transcript. As the original deposition transcript is to be sent to me at my office, there has not yet been a deposition transcript available for the court to review for this ex parte application.

27. Dr. Williams provided answers to deposition questions concerning his opinions. He disclosed those opinions in his deposition.

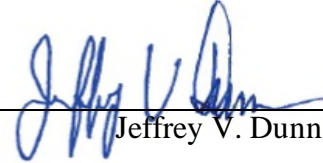
28. On January 27, 2014, this Court ruled that motions *in limine* and trial on the issue of the federal reserved rights would proceed on February 10, and 11, 2014 and that trial on the return flow issue would not commence until February 18, 2014.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed this 29th day of January, 2014, at Los Angeles, California.

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Jeffrey V. Dunn

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PROOF OF SERVICE

I, Sandra K. Sandoval, 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, 300 South Grand Avenue, 25th Floor, Los Angeles, CA 90071. On January 29, 2014, I served the within document(s):

DECLARATION OF JEFFREY DUNN IN SUPPORT OF LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40'S OPPOSITION TO EX PARTE APPLICATION TO CONTINUE RETURN FLOW QUANTITY PORTION OF PHASE 5 TRIAL



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.



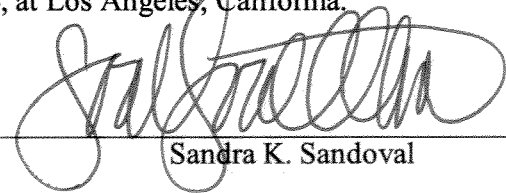
by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.



by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

I 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 January 29, 2014, at Los Angeles, California.


Sandra K. Sandoval