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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

**ANTELOPE VALLEY  
GROUNDWATER CASES**

Included Actions:

Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co.  
Los Angeles County Superior Court  
Case No. BC 325201  
  
Los Angeles County Waterworks District  
No. 40 v. Diamond Farming Co.  
Kern County Superior Court  
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.  
Riverside County Superior Court  
Consolidated actions  
Case Nos. RIC 353 840, RIC 344 436, RIC  
344 668

Judicial Council Coordination No. 4408

For filing purposes only:  
Santa Clara County Case No. 1-05-CV-049053

*Assigned to the Honorable Jack Komar*

**REPLY OF ANTELOPE VALLEY  
MOBILE ESTATES, LLC RE ITS  
MOTION TO BE A CLASS MEMBER  
OF THE "SMALL PUMPERS"  
(WOOD) CLASS; REQUEST FOR SANC-  
TIONS AGAINST ERIC L. GARNER,  
JEFFREY V. DUNN, WENDY Y. WANG,  
BEST BEST & KRIEGER LLP, RICH-  
ARD D. WEISS, WARREN WELLEN,  
JAMES L. MARKMAN, DOUGLAS J.  
EVERTZ, WAYNE LEMIEUX, THOMAS  
BUNN III, BRADLEY T. WEEKS, AND  
JOHN TOOTLE**

Complaint Filed: 01/10/2008

Date: November 4, 2014  
Time: 10:00 A.M.  
Dept.: 56

Cross defendant Antelope Valley Mobile Estates, LLC ("AVME") replies to the Public Water  
Suppliers ("PWS") opposition in this matter (the "Opposition"), on the following grounds:

**PREFACE**

**REPLY OF ANTELOPE VALLEY MOBILE ESTATES, LLC RE ITS MOTION TO BE A CLASS  
MEMBER OF THE "SMALL PUMPERS" (WOOD) CLASS; REQUEST FOR SANCTIONS**

1           1. Every living being must have water; every person and enterprise is water dependant. The  
2 public water suppliers, herein, are “special” in that each is a government entity whose primary  
3 (only?) function is to secure water and to transport it through thousands of miles of pipes, moving  
4 the water over innumerable other properties, to its area’s residents.

5           AVME is a private entity, a “brother and sister” team operating a mobile home park solely  
6 on their property; as part of the business operation, AVME pumps water on its property, for its  
7 “park” use and for the use of its mobile home residents, all on its property.

8           2. The Small Pumpers class is based on three commonalities (private persons and entities;  
9 pumping and using water on their Basin land; pumping less than 25 afy in one of the years since  
10 1946), but includes within those commonalities a disparate collection of members (including  
11 businesses) - some of whom will use more water, and some of whom will use less. Rather than  
12 attempting a fair allocation to the collective of the class (including the businesses), or trusting that  
13 they have done so, the public water suppliers argue that the admission to the class of one - clearly  
14 qualified - member will void the collective water allocation to the over-a-thousand class members  
15 (Really?) and so class membership should be denied - even though class membership is clearly  
16 authorized under the three commonalities.

17           3. Everyone within the Basin will at some point have to document/estimate its water usage;  
18 AVME has done its best to so document/estimate via this motion, and AVME clearly qualifies for  
19 class membership.

20           4. Any stipulation or Physical Solution must have a “future” component, either  
21 accommodating “new uses” or “expanded uses,” or freezing the usage and preventing or “taxing”  
22 new or expanded use. That is, current water usage must be established and then future  
23 new/expanded usage must be considered and accounted for (either accommodated/regulated or  
24 prevented/”taxed”). AVME has herein established its usage as to 28 hook ups, and states that its  
25 approval for the 18 additional hook ups predated its participation in this action, that AVME has not  
26 constructed any of the 18 additional approved hook ups, and AVME anticipates that the “future  
27 component” of the stipulation or Physical Solution will regulate how the 18 hook ups are handled.

28 ***I. INTRODUCTION.***

1 Under this Court's September 2, 2008 Class Certification Order (the "ORDER"), AVME  
2 clearly qualifies as a class member. In effect, the ORDER asks three questions: (1) Is the potential  
3 member "private" (in the non governmental sense)? (2) Does the potential member own real property  
4 in the adjudicated Basin area? (3) Has the potential member pumped less than 25 afy on its property  
5 in any year since 1946? All persons and entities who can answer "yes" (subject to certain very  
6 specific exclusions), as AVME can answer "yes," are class members.

7 Despite AVME's seemingly clear class status, the public water suppliers ("PWS") raise  
8 absolutely irrelevant, unsupported (and unsupportable), and (seemingly) nonsensical arguments -  
9 arguments apparently made in bad faith - raising two questions: Have the PWS undertaken a  
10 "scorched earth" policy, meaning they're going to make this litigation as expensive as possible,  
11 raising even bogus arguments simply to grind everyone (AVME) into submission with incessant,  
12 unwarranted attorney's fees? Do the PWS, or one or more of their counsel, believe that they are so  
13 favored in this litigation that it/they/he/she can say anything - no matter how ill conceived or at odds  
14 with the ORDER, and this Court will do it.

15 Although the ORDER makes no mention of any potential class member's function or how  
16 it uses the water it pumps (the ORDER is blind to a member's function or manner of using water),  
17 the PWS assert that AVME should be excluded as an "in essence water supplier" or a "like a water  
18 supplier" entity; Although the ORDER "thrice" specifically excluded the public water suppliers from  
19 the class (as governmental, not private entities; as "defendants" in this action; and failing the  
20 requirement of "pumping ... on their property") - thereby mandating that **"all" private entities would**  
21 **be treated disparately from the defendant, governmental, entities** - and the same ORDER excluded  
22 "shareholders of a mutual water company" (meaning the Court clearly considered and excluded those  
23 water suppliers which needed to be excluded, and left in the class all other "persons and entities" **of**  
24 **whatever function, presumably including "faux water suppliers"**), the PWS now assert that this  
25 Court should treat this private entity (which rents out mobile home pads, and operates a mobile home  
26 park, solely on its property) the same as is treated a public water supplier (a governmental entity  
27 which supplies solely and only water through vast networks of pipes covering hundreds of miles of  
28 other people's/entity's property, charging and collecting under the power of the state), in complete

disregard of the ORDER.

AVME asks for sanctions against the PWS and each of their counsel for opposing this motion in bad faith.

**II. THE PWS CONCEDE THAT AVME QUALIFIES AS A SMALL PUMPER UNDER THIS COURT'S SEPTEMBER 2, 2008 WOOD CLASS CERTIFICATION ORDER.**

**A. The "Targeting"/"Defining" Sentence of the Court's Certification Order Makes Clear that AVME Qualifies as a Wood Class Member.**

As cited in the moving papers (and in the various exhibits attached to the Opposition declaration), this Court's Class Certification Order (the "ORDER") defines the class in its opening sentence as:

**"All private (i.e., non-governmental) persons and entities that own real property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present."** (Underlining, bold and italics added.)

The ORDER **specifically makes provision for:**

a) "All persons **and entities**" – so long as the entities are not governmental ("... private (i.e., non-governmental) ..."); it's noteworthy this designation includes **all private persons and entities** – irrespective of "function," and that the defining or targeting sentence includes not only "just live on the property and 'do nothing' persons," and single household ranchers or farmers, **but also** ranchers renting out cabins/residences or employing ranch hands (or even ranch families), owners of duplexes, triplexes, apartment buildings, mobile home parks, motels, hotels, privately owned swimming pools, privately owned "do gooders" attempting to assist the homeless or disabled by providing residential housing, McDonald's Hamburger Stands, Hedge Funds, Lawyers, Bankers and (incorporated or LLC'd) "Indian Chiefs." This specific phrase "[a]ll private ... persons and entities" within the ORDER simply requires that all entities be "private" in the "non-governmental" sense. The Opposition fails to raise any facts, or to even argue, that AVME is a government entity, or that it is somehow "governmental" in the nature of its ownership status; AVME's LLC status, with ownership divided between a brother and sister, and each's spouse (Sandra Disco Declaration,

1 Moving Papers, p. 5:7-11), would appear to preclude it's ownership classification as a  
2 "governmental" entity. The PWS concede via their "limited" opposition that AVME's entity status  
3 is non governmental and that AVME qualifies as a class member.

4 b) ownership of real property in the adjudicated Basin area by the "person or entity"  
5 member. Not only does the Opposition fail to challenge AVME's real property ownership, the  
6 Opposition cites AVME's statement of ownership, quoting from AVME's moving papers, as  
7 follows:

8 "(Motion at p[] ... 10:4-5 [""AVME is a private entity, the owner of 10 acres of land  
9 in Rosamond, California, upon which it operates a mobile home park with 28 mobile  
10 home connections, or hookups"]..."

11 Again, the PWS concede that AVME owns real property in the adjudicated Basin area, and that  
12 AVME qualifies as a class member.

13 c) pumping less than 25 acre-feet per year on their property during any year from 1946 to  
14 the persent: that is, (1) "pumping less than 25 acre-feet per year," (2) "on their property", and (3)  
15 "during any year from 1946 to the present." The Opposition again raises no facts, and makes no  
16 argument, that AVME pumps and has pumped more than 25 afy for every year 1946 to the present,  
17 or that the water was not pumped on AVME's property, or that the water was not used on AVME's  
18 property. Again, PWS concede via their "limited" opposition that AVME pumped less than 25 afy  
19 for at least one of the years 1946 to the present (and in fact AVME's pumping was less than 25 afy  
20 for each of the years 1946 to present), and that AVME qualifies as a class member.

21 In this regard it is specifically noteworthy that the "class member requirement" is that in one  
22 of the years from 1946 to now the person/entity pumped less than 25 afy; it didn't matter, and it  
23 doesn't matter, how much more the person/entity pumped in all other years, only that in one of the  
24 years it pumped less than 25 afy! Under the defining phrase, a class member could now be pumping  
25 250 afy.

26 B. AVME Does Not Fit into Any of the "Specific Exclusions" to Class Membership,  
27 and, on the Basis of the Totality of the Certification Order, AVME Qualifies as a Class Member.

28 The ORDER goes on to exclude certain specific groups of persons/entities, as follows:

1 “The Class excludes the defendants herein, any person, firm, trust, corporation, or  
2 other entity in which any defendant has a controlling interest or which is related to  
3 or affiliated with any of the defendants, and the representatives, heirs, affiliates,  
4 successors-in interest or assigns of any such excluded party. The Class also  
5 excludes all persons and entities that are shareholders in a mutual water company.”  
6 (Bold, underlining and italics added.)

7 The Opposition again raises no facts, and makes no argument, that AVME is a defendant or  
8 is affiliated, controlled or related to any defendant, or that it is a representative of, or received its  
9 interest from, any of the excluded parties.

10 Based on the totality of the ORDER, as interpreted via the English language, AVME qualifies  
11 to be a member of the Small Pumpers (Wood) class.

12 **C. AVME’s Intent Is Simply to Continue Doing its Business (As Presently Constituted),**  
13 **but to Cut off Attorney’s Fees in this Action, and to Avoid Any Contribution to the Small Pumpers**  
14 **Class Counsel’s Attorneys Fees - Which the PWS Are Forcing!**

15 On the one hand, AVME is not serviced by any public (or private) water supplier, and, if its  
16 well – its only source of water – is ever prevented from pumping, AVME would have to hire trucks  
17 to deliver its water, or pay to have pipes laid to a water supplier, or simply shut down. On the other  
18 hand, AVME rents to low-to-medium income clientele, who cannot afford to “truck in” water or to  
19 “lay trans-city pipes,” and so it seems AVME would simply have to close its business operation.

20 AVME’s sole and only intent is to survive the expense of this litigation and to continue  
21 operating its business as presently constituted, as best it can; AVME has evaluated counsel’s  
22 observations and believes class membership gives it the best chance:

- 23 - to continue pumping and to continue its business operations as presently constituted;
- 24 - to stop the accrual of further incessant, unwarranted attorneys fees;
- 25 -to prevent the bullying tactics of the PWS who appear to believe that anyone not a member
- 26 of the Small Pumpers (Wood) Class must pay a share the Wood Class Counsel attorney’s fees; and
- 27 - to prevent the future forced purchase of pipes to connect to a water supplier and the
- 28 increased purchase price of “public water supplier” water.

1 This lawsuit has been exceedingly expensive for this “mom and pop” mobile home park, and  
2 AVME needs to stop the attorney’s fees “blood drain”; it can do so by joining the Wood Class and  
3 allowing class counsel to represent its interests.

4 **III. THE PWS OPPOSITION IS IN BAD FAITH – IT DOESN’T RAISE FACTS, OR EVEN**  
5 **ARGUE, THAT AVME FAILS TO MEET CLASS CRITERIA; THIS BAD FAITH**  
6 **OPPOSITION IS THE RESULT OF EITHER A “SCORCHED EARTH, MAKE THEM**  
7 **PAY ATTORNEY’S FEES” POLICY, OR A BELIEF SAID DEFENDANTS ARE**  
8 **“FAVORED SONS” WHO CAN MAKE REALLY INANE ASSERTIONS –**  
9 **UNCONNECTED TO THE CERTIFICATION ORDER – AND GET WHATEVER THEY**  
10 **REQUEST.**

11 The PWS’ Seemingly “Bad Faith” Assertions Are:

12 1. PWS alleged that all small pumpers are single-family residential owners with small  
13 agricultural activities. (Opposition, p. 2:15-16 (“In short, the small pumpers are owners of low  
14 density residential parcels that on occasions may conduct small scale agricultural activities.”)) The  
15 ORDER applies to “all private (i.e., non-governmental) persons and entities” - everyone and anyone  
16 who is private and for one year pumped under 25 afy.

17 2. PWS ignored the governmental/private distinction of the ORDER and alleged that AVME  
18 was a water supplier and should be treated the same as the public water suppliers (Opposition, p.  
19 2:25 to 3:17), despite the ORDER, which three times excluded the public water suppliers from the  
20 class, and specifically excluded shareholders of a mutual water company, but presumably left all  
21 other “in essence water suppliers,” or “like a water supplier(s). The ORDER mandated different  
22 treatment, but the PWS mewl for “equal treatment,” and “fairness,” while their inane papers are  
23 an instrument by which they bully and “scorch” AVME’S “earth.”

24 3. PWS allege that class admission would be preferential treatment to AVME over all other  
25 mobile home parks (Opposition, p. 3:7-17), without alleging that any other such park applied for  
26 class membership and was denied (to counsel’s limited knowledge no such denial took place), and  
27 fails to allege either: a) how any such park didn’t have the option to apply, or b) why any such park  
28 could not now apply, for membership if it qualified under the ORDER and so chose. It’s not clear

1 how AVME's admission into the class would provide a "preferential treatment" in derogation to  
2 anyone (person or entity) - and the allegation is made in bad faith.

3 4. PWS allege there is an arbitrary upper limit on the amount of water any Small Pumper  
4 class member can pump (Opposition, p. 3:20-24), while the ORDER makes no such cut off,  
5 requiring only that a member pumped under 25 afy in one year since 1946 (theoretically, a member  
6 could be pumping 250 afy now and still qualify);

7 5. PWS imply the Partial Settlement applies to AVME (Opposition, p. 7:20-24) despite the  
8 Partial Settlement's plain language (set forth at Opposition, Exhibit A, footnote 1, p. 7:27-28), which  
9 states, "<sup>1</sup> The Parties agree that as of the Effective Date of this Agreement [believed to be  
10 10/17/13], the membership of the Wood Class will be final." It is unclear whether this language  
11 prevents application of the Stipulation/Judgment to AVME (AVME is only now applying to be a  
12 member), or whether, despite the language, AVME could, if it chose, partake of the Stipulation.

13 As AVME is unaware of the back story, or the intent of such language, it is unable at this  
14 time to make an informed assertion as to whether the Settlement applies or not.

15 AVME can state it has no plans to do anything other than continue its ongoing business as  
16 it currently exists.

17 6. PWS allege the Partial Settlement grants the right to pump water, when it merely states  
18 the Settling Defendants will not contest certain water usage.

19 7. PWS allege that the Partial Settlement was entered into on the basis of Richard Wood's  
20 declaration, which the PWS interpreted as describing all class members as rural, single family  
21 residence owners (Opposition, p. 2:16-19), when the declaration states clearly Mr. Wood is only  
22 describing "some" of the class members ("I know or am acquainted with a *significant number* of  
23 small pumper parcel owners...." (Bold and italics added.) Opposition, p. 2:10). The PWS then ask  
24 the Court to ignore the ORDER (by which AVME qualifies for class membership) and nonetheless  
25 deny AVME class membership - to conform the class membership to PWS' "mistaken" (Really?)  
26 interpretations.

27 8. PWS allege "projections" purporting to be AVME counsel's interpretation of the  
28 confidential, private Proposed Settlement.



1 It was counsel's understanding when he received the Proposed Settlement that this was a  
2 confidential writing, and that none of its terms were to be publicly discussed or divulged. Counsel  
3 will continue to honor that requirement and will make no statement either confirming or dis  
4 affirming an alleged Proposed Settlement Solution. Counsel will, for purposes of argument, state  
5 the following: Here, the PWS admit AVME qualifies as a class member, but ask this court to  
6 nonetheless deny class membership based on a "projection" attributed to counsel, but which  
7 counsel, as an officer of the court, can neither affirm nor disaffirm, or in any way discuss.. The  
8 PWS act in bad faith, and play by one-sided rules.

9 AVME can say, as it has said several times, it wants only to continue its business as presently  
10 constituted, and simply to survive the overwhelming costs of this litigation. AVME (and counsel)  
11 perceive AVME's best hope to do so is as a class member of the Small Pumpers (Wood) Class;  
12 AVME (and counsel) believe AVME meets all requirements/conditions of the ORDER.

13 9. PWS allege that AVME intends to expand, without any facts of such intent, and contrary  
14 to AVME'S clear statements that it simply wants to exist as is.

15 10. PWS imply that the "potential to expand" means: a) AVME will expand; and b) AVME  
16 will not be limited by any "new use" provisions or "expanded use" provisions imposed either by this  
17 Court, or by a stipulation to a Physical Solution. AVME has stated it has no expansion plans and,  
18 presumably, that new water uses, or expanded water uses, will be considered/regulated as part of the  
19 resolution of this matter, and that any such rules/regulations will apply to and regulate/tax everyone,  
20 equally.

#### 21 **IV. CONCLUSION.**

22 1. In short, although the ORDER is "blind" to a potential member's function, asking only  
23 status/"facts on the ground" questions, the PWS raise nonsensical, unsupported, inapplicable  
24 "function" arguments; this is bad faith.

25 2. Despite AVME'S knowledge that the Proposed Settlement is confidential, private and  
26 "not to be discussed or divulged" - seemingly precluding any response or discussion, even to say,  
27 "no, that's wrong," the PWS attribute a "Proposed Settlement interpretation" to counsel and make  
28 unsupported projections thereon; this is bad faith.

1           3. The PWS make innumerable unsupported, illogical, simply bogus claims (Section III,  
2 paras. 1-10, at pp. 7-9); this is bad faith.

3           Only two reasons for such bad faith occur to counsel. Either: a) the public water suppliers  
4 have embarked on a “scorched earth” policy to make the litigation so expensive the public entities  
5 get their way (here, raising inane arguments simply to make attorney work for AVME); or b) the  
6 public water suppliers, or one or more of their counsel, believe they are such “favored sons” that they  
7 can ask anything, for even the most inane of reasons/arguments, and the court will grant it (as  
8 pointed out, the Opposition specialized in inanity).

9           This Opposition was presented in bad faith to make a small mom and pop operation spend  
10 unwarranted, unaffordable attorneys fees, and the collective of the PWS, and the attorneys proffering  
11 the Opposition, Eric L. Garner, Jeffrey V. Dunn, Wendy Y Wang, Best Best & Krieger, LLP, Richard  
12 D. Weiss, Warren Wellen, James L. Markman, Douglas J. Evertz, Wayne Lemieux, Thomas BunnIII,  
13 Bradley T. Weeks, and John Tootle, should be ordered to pay AVME’S attorneys fees. Counsel will  
14 file an appropriate declaration of his time and charges upon the Court’s directive.

15  
16 Dated: October 28, 2014

Respectfully submitted,

17 LAW OFFICES OF WALTER J. WILSON

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20 Walter J. Wilson, Attorney for  
21 Antelope Valley Mobile Estates, LLC  
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