

EXHIBIT D

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WATERWORKS DISTRICT NO. 40, ANTELOPE

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8 (See Next Page For Additional Counsel]

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

12
13 **ANTELOPE VALLEY
GROUNDWATER CASES**

14 **Included Actions:**

15 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
16 Court of California, County of Los
Angeles, Case No. BC 325201;

17 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
18 Court of California, County of Kern, Case
No. S-1500-CV-254-348;

19
20 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
21 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
22 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

[Code Civ. Proc., § 382; Cal. Rules 3.764 and
3.765]

**PUBLIC WATER SUPPLIERS' NOTICE
OF MOTION AND MOTION TO AMEND
OR MODIFY SEPTEMBER 11, 2007
ORDER CERTIFYING PLAINTIFF
WILLIS CLASS**

Hearing:

Date: August 11, 2008

Time: 9:00 a.m.

Dept.: 1

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NOTICE OF MOTION

TO ALL PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Rules 3.764 and 3.765 of the California Rules of Court, on August 11, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 1, Room 534 of the above titled court, located at 110 North Hill Street, Los Angeles, California 90012, defendants California Water Service Company; City of Lancaster; City of Palmdale; Littlerock Creek Irrigation District; Los Angeles County Water Works District No. 40, Antelope Valley; Palmdale Water District; Rosamond Community Services District; Palm Ranch Irrigation District; and Quartz Hill Water District (collectively, "Public Water Suppliers") will, and hereby do, move for an order to amend or modify the court's Order Certifying Plaintiff Class ("Order") dated September 11, 2007 as follows:

1. The class definition in Paragraph 1 of the Order is amended or modified to delete the phrase "that have are not presently pumping water on their property and did not do so at any time during the five years preceding January 18, 2006" and replaced with the phrase " have not pumped groundwater on their property." The Motion will be made on the grounds that the Order's class definition and the proposed class definition in the pending Wood Class Certification Motion lack consistency or comprehensiveness to achieve the "comprehensive, binding, and lasting adjudication of the water rights at issue in this matter . . . to the extent possible. . . [for] all present or potential users of groundwater within the Antelope Valley. . . . (Order Modifying Class Definition and Allowing Parties To Opt In To The Plaintiff Class dated May 22, 2007).

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1 The Motion is based upon the attached Memorandum of Points and Authorities, and any
2 other oral and documentary evidence properly before the Court.

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4
5 Dated: July 11, 2008

BEST BEST & KRIEGER LLP

6
7 By 

8 ERIC L. GARNER
9 JEFFREY V. DUNN
10 STEFANIE D. HEDLUND
11 Attorneys for Defendants
12 ROSAMOND COMMUNITY SERVICES
13 DISTRICT and LOS ANGELES COUNTY
14 WATERWORKS DISTRICT NO. 40,
15 ANTELOPE VALLEY
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1 I. INTRODUCTION

2 The purpose of this motion is to achieve a comprehensiveness consistency between the
3 class definition in the Willis Class and the proposed Wood Class. Their respective definitions
4 create a comprehensiveness issue because landowners may be excluded from either class.

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6 II. PROCEDURAL FACTS

7 On September 11, 2007, the Court issued its Order Certifying Plaintiff Class for a
8 plaintiffs' class action with Rebecca Lee Willis as the representative of the Class and the law firm
9 of Krause, Kalfayan, Benink & Slavens LLP as counsel for the Class. On May 22, 2008, the
10 Court issued its Order Modifying Class Definition And Allowing Parties To Opt In To The
11 Plaintiff Class ('Order').

12 On or about June 20, 2008, plaintiff Richard A. Wood filed his "Motion To For Class
13 Certification" for certification of a class of all persons and entities that own real property in the
14 Court's previously-determined Adjudication Area ("Basin") that "have been pumping
15 [groundwater] within the five year period preceding the filing of this action" subject to certain
16 exclusions. Wood filed his class action complaint on June 2, 2008.

17
18 III. THE EXISTING WILLIS CLASS DEFINITION, TOGETHER WITH THE
19 PROPOSED WOOD CLASS DEFINITION, OMIT LANDOWNERS FROM
20 EITHER CLASS

21
22 As presently certified, the Willis Class generally includes all persons and entities that own
23 real property in the Court's previously-determined Adjudication Area ("Basin") that do not pump
24 groundwater and have not pumped groundwater within the five years preceding January 18, 2006,
25 and generally excludes municipal water customers.

26 As presently proposed, the Wood Class generally includes all persons and entities that
27 own real property in the Court's previously-determined Adjudication Area ("Basin") that have
28 pumped groundwater within the five years preceding the filing of the action on June 2, 2008.

1 An example may help illustrate the lack of comprehensiveness in the two class definitions.
2 Assume a landowner does not presently pump groundwater but pumped groundwater at some
3 time between January 18, 2001, and June 1, 2003. The landowner would not be a member of the
4 Willis Class because it excludes any landowner that does not pump groundwater and did not
5 pump at any time from January 18, 2001 to January 18, 2006. The landowner would not be a
6 member of the Wood Class because it excludes landowners who have not pumped groundwater
7 from June 2, 2003 to June 2, 2008.

8 9 III. POTENTIAL MODIFICATION OF THE CLASS DEFINITIONS

10 There are at least two solutions to the comprehensiveness issue created by the two existing
11 class definitions. One solution is to modify the class definitions for both the Willis and the Wood
12 Classes as suggested by Bolthouse Properties and Wm Bolthouse Farms (collectively,
13 “Bolthouse”) in their July 10, 2008 “Objection” to the Wood Class Certification Motion: The
14 Willis Class to include landowners who have never pumped groundwater; and the Wood Class to
15 include landowners who have pumped groundwater. As noted by Bolthouse, the approach
16 achieves comprehensiveness while providing a simple solution to the existing class definition
17 comprehensiveness issue.

18 Another solution is to retain the existing class definition in the Willis Class Certification
19 Order but modify certain language in the proposed Wood Class definition as follows: All private
20 (*i.e.*, non-governmental) persons and entities that own real property within the Basin, as
21 adjudicated, and that currently pump groundwater or that have pumped on their property within
22 the five year period preceding *January 18, 2006*. (Emphasis added.) Either solution may be
23 acceptable but the Bolthouse proposal is preferred for its simplicity.

24 IV. CONCLUSION

25 The motion can be denied should the Court modify the proposed class definition in the
26 Wood Class Certification Motion to achieve comprehensive coverage of landowners in the
27 Adjudication Area. For the all reasons above, however, the Public Water Suppliers respectfully
28 request that the Court grant their motion to amend and modify the Order as requested herein and

1 to also modify the proposed definition in the Wood Class Certification motion to generally
2 include landowners who have pumped.

3
4 Dated: July 11, 2008

BEST BEST & KRIEGER LLP

5
6 By 

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STEFANIE D. HEDLUND
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ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40

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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 July 11, 2008, I served the within document(s):

PUBLIC WATER SUPPLIERS' NOTICE OF MOTION AND MOTION TO AMEND OR MODIFY SEPTEMBER 11, 2007 ORDER CERTIFYING PLAINTIFF CLASS

- ☒ 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 July 11, 2008, at Irvine, California.


Kerry V. Keefe