

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

**ANTELOPE VALLEY GROUNDWATER
CASES**

**OPPOSITION TO MOTION FOR
PRELIMINARY APPROVAL OF
PARTIAL WOOD CLASS
SETTLEMENT**

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co.
Superior Court of California, County of Los Angeles,
Case No. BC 325 201

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,
consolidated actions, Case Nos. RIC 353 840, RIC
344 436,
RIC 344 668.

The United States opposes the Motion for Preliminary Approval of Partial Class

Settlement and the Motion for Final Approval of Settlement for the Wood Class Stipulation of
Settlement (the "Settlement Agreement"), filed by the California Water Service Company, City
of Lancaster, Palmdale Water District, Quartz Hill Water District, and Rosamond Community
Services District, and Richard Wood, on behalf of himself and the Class. The proposed Wood
Class Settlement Agreement does not comply with the requirements of the McCarran

1 Amendment which joins the United States as a defendant in a suit for the adjudication of rights
2 to the use of water of a river system or other source. 43 U.S.C.S. § 666(a). The Class Settlement
3 Agreement, while ostensibly defining Class members’ rights to the use of water in the Antelope
4 Valley Groundwater Basin, does not amount to a determination of the members’ water rights.
5 As a result, it does not further the McCarran goals of a comprehensive adjudication of all rights
6 to water and, in fact, impedes a comprehensive resolution of all Basin water rights.
7

8 First, and foremost, the Settlement Agreement does not make or propose to make a
9 determination of the reasonable and beneficial use of the Class members’ use of water either
10 individually or collectively.¹ The reasonable and beneficial use of water is a fundamental
11 requisite for all users of water under state law. CALIFORNIA CONSTITUTION, art. X, § 2; *Tulare*
12 *Irrigation Dist. v. Lindsay-Strathmore Irrigation Dist.* 3 Cal. 2d 489, 524-525 (1935)(instructing
13 the trial court to make a determination of correlative water right holders reasonable and
14 beneficial use of water). The Class, composed largely of pumpers of small amounts of water for
15 domestic purposes, is expected to have modest demands for water. One estimate is that domestic
16 use is on the order of 1.0 acre-foot per year per household.² The proposed Settlement
17 Agreement, however, grants each Class member a use of up to 3 acre-feet of water per year. In a
18 Class of approximately 4,000 users, this settlement could potentially decree to the Class up to
19 12,000 acre-feet, when actual use may be a substantially smaller volume. Because the
20 Settlement Agreement does not adequately define the reasonable and beneficial water use of the
21 Class members it does not make a determination of the water rights of the Class as required by
22 California law and the McCarran Amendment.
23

24 ¹ The Settlement Agreement “contends” that each Wood Class Member household is entitled to
25 the reasonable and beneficial domestic use of up to 3 acre-feet per year on their overlying land
without citing to a source of competent evidence. See Settlement Agreement at ¶ C.2.

26 ² According to the Water Education Foundation, the average California household uses between
27 one-half and one acre-foot of water per year for indoor and outdoor uses. [http://www.water-
ed.org/watersources/subpage.asp?rid=9&page=19](http://www.water-ed.org/watersources/subpage.asp?rid=9&page=19).

1 The United States recognizes that this settlement does not bind the non-settling parties
2 and is only effective against the signatories. But this does not mean the Settlement Agreement
3 will have a benign effect on the non-settling parties and their attempt to reach a comprehensive
4 resolution of all claims to water. The proposed Settlement Agreement is subject to “prove-up”,
5 or an evidentiary process where the Class must present evidence of its entitlement to the amount
6 of water claimed.³ In the prove-up phase, the Class’s right to up to 12,000 acre-feet of water will
7 be subject to challenge and will likely be opposed by non-settling parties. Consequently, the
8 amount of water the Class may be able to prove it is reasonably and beneficially using could be
9 substantially less than 3.0 acre-feet per Class member. This uncertainty creates a great
10 impediment to a basin-wide settlement where the safe yield of the basin will be divided among
11 all water users. Other parties will not be able to determine, based on the proposed Wood
12 Settlement Agreement, the amount of available safe yield to which their correlative rights will
13 apply. In an overdrafted basin where every acre-foot of water is hotly contested, the doubt over
14 potentially several thousand acre-feet of water will make a full and comprehensive settlement
15 and physical solution that much more difficult.

16 Should the Court approve a Wood Settlement Agreement at this time the United States
17 respectfully asks that the Order notify the Class that a future phase of litigation will determine
18 the Class members’ actual and beneficial uses. Such a determination may limit the eventual
19 decree of Class members’ rights to an amount less than the 3.0 acre-feet set forth in the proposed
20 Settlement Agreement. Given the expense and time to notify all Class members of the
21 Settlement Agreement, however, it would be more efficient and less costly to stay consideration
22 of this settlement until evidence is presented on reasonable and beneficial use of the Class
23 members, or a more definite statement on the quantity of water beneficially used by the Class is
24 included in an amended Settlement Agreement.

25 _____
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27 ³ The Settlement Agreement requires the non-Class settling parties to present competent
28 evidence and have that evidence incorporated in a Final Judgment, but there appears to be no
such requirement for the Class. *See* Settlement Agreement at ¶ C.1.

1 RESPECTFULLY SUBMITTED this 21st day of October 2013.

2
3 /s/ R. Lee Leininger
4 R. LEE LEININGER
5 JAMES J. DuBOIS
6 ATTORNEYS FOR THE UNITED
7 STATES OF AMERICA
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