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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

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
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-254-348Wm. 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 No. RIC 353 840,
RIC 344 436, RIC 344 668

Judicial Council Coordination Proceeding
No. 4408

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

ANTELOPE VALLEY GROUNDWATER
AGREEMENT ASSOCIATION'S
RESPONSE TO PLAINTIFF WILLIS'
PARTIAL OBJECTION TO PUBLIC
WATER SUPPLIERS' MOTION TO
AMEND CLASS CERTIFICATION
ORDER

1
2 The Antelope Valley Groundwater Agreement Association ("AGWA") hereby responds to
3 Plaintiff Willis' Partial Objection to Public Water Suppliers' Motion to Amend Class Certification
4 Order ("Partial Objection").

5 Plaintiff Willis has presented the Court with a [Proposed] Order Modifying Definition of
6 Plaintiff Class ("Proposed Order") asking that the Court certify a modified Class for the limited
7 purposes of determining Basin characteristics and "the validity of the public water suppliers'
8 prescription claims." (Proposed Order, 3:10-12.) Plaintiff Willis asks that the Modified Class
9 exclude Basin landowners with parcels of less than one acre who receive water from a public water
10 supplier. She further asks that the Court certify a sub-class (essentially the Class as it exists now),
11 consisting of all members of the Modified Class who have not pumped groundwater on their
12 properties at any time since January 18, 2001. Finally, Plaintiff Willis asks that the Court restrict the
13 Class Counsel's representation of the Modified Class during settlement negotiations to
14 representation of only the proposed sub-class. (Proposed Order, p. 3.)

15 The Court should not follow Plaintiff Willis' proposal and should not grant the Proposed
16 Order, as doing so would create a Modified Class with internally conflicting interests, would benefit
17 the purveyors and non-pumpers to the detriment of those pumpers included in the class, and would
18 prevent a final and binding adjudication of the issues in this case. AGWA again urges the Court to
19 maintain a class of non-pumpers and require the purveyors to name and serve all landowners
20 pumping from the Basin.

21 **I. PLAINTIFF WILLIS' PROPOSAL WOULD RESULT IN A CONFLICTED CLASS**

22 As described in Antelope Valley Groundwater Agreement Association's Response to
23 Motions to Amend Class Definition, any class that includes both pumpers and non-pumpers will
24 contain members with conflicting interests in this litigation. This is the case even as to what some
25 counsel assume are objective issues upon which all landowners could agree. As described by
26 AGWA counsel at the most recent hearing in this case, pumpers and nonpumpers may desire
27 different outcomes in the determination of the Basin's yield, as pumpers may actually wish that the
28

1 Court find that the purveyors have obtained a prescriptive right in this case.¹ In any determination of
2 yield and consequent determination of prescription, the pumpers are faced with the prospect of
3 losing a portion of the Basin's yield through a successful showing of prescription, or losing some of
4 their water through correlative sharing with dormant overlyers if no prescription is shown. The
5 pumping landowners may prefer to have prescription shown if the amount of water they would lose
6 by having their rights defined by self-help is less than the amount they would lose by sharing
7 correlatively with the now dormant landowners. The dormant landowners do not share this interest
8 at all – since they cannot show any self-help, the only logical approach for them is to defend against
9 the claims of prescription. Further, these are not interests that will not arise until some later point in
10 this litigation, but are conflicting interests that go to the heart of the initial determinations that Class
11 Counsel and the purveyors urge can be done with a unified landowner class.

12 **II. THE PROPOSAL WILL BENEFIT EVERYONE BUT PUMPER CLASS MEMBERS**

13 As described above, through the Partial Objection and Proposed Order, Plaintiff Willis urges
14 the creation of a class of landowners, including both pumpers and non-pumpers, but Class Counsel
15 would represent only the interests of a portion of the Modified Class in settlement negotiations and
16 would not continue to represent those pumpers within the Modified Class once two issues – Basin
17
18

19 ¹ Mr. Fife:

20 Mr. Zlotnick, if he represents both pumpers and nonpumpers, is going
21 to have an impossible time participating in the settlement negotiations
22 because a central issue in those negotiations is how to reconcile the
rights of the pumpers versus the nonpumpers.

23 I represent pumpers. Our biggest concern is not the water purveyors,
24 it's the nonpumpers. And most of our participation in the settlement
25 negotiations – which are underway right now, this isn't something in
26 the future – our principal concern is to get a settlement that protects us
27 from the nonpumpers. If we can get a settlement, then these phases of
trial such as basin characteristics, prescription, et cetera, may become
moot. Maybe we can avoid them altogether. If we have a proper
settlement in the works, perhaps we can have stipulations about those
things, we can reach consensus.

28 (January 14, 2008 Hearing Transcript, 30:3-20.)

RESPONSE TO WILLIS' PARTIAL OBJECTION TO MOTION TO AMEND CLASS CERTIFICATION ORDER

1 characteristics and the purveyors' claims of prescription – have been resolved.² This proposal
2 would benefit the purveyors and the nonpumpers (dormant overlyers) but work to the detriment of
3 the pumpers.

4 Remarkably, though proposed by landowner counsel, Plaintiff Willis' proposal will succeed
5 in accomplishing the purveyors' objective for the use of a class structure in this case – landowner
6 participation will be minimized. All non-party landowners, including pumpers, whom it would be
7 assumed would have a particularly strong interest in the outcome of this case, will be shoehorned
8 into one Modified Class. Though the Antelope Valley is made up of tens of thousands of small
9 parcels, only a handful of landowners are presently active in this case, and there is only one group of
10 local landowner farming interests (AGWA), countering the more than 6 law firms representing the
11 purveyors. Due to their small size, it is unrealistic to think that small pumpers would attempt to
12 participate individually in this action. Rather, they would band together in to groups, just as they
13 have done in other adjudications. Plaintiff Willis' proposal would prevent any additional landowner
14 groups from forming and leave the proposed class to bear the primary responsibility for defending
15 the lawsuit on behalf of all non-party landowners.

16 By preventing the formation of additional landowner groups in this case, the purveyors will
17 be benefited by the consolidated representation of a vast number of landowners in one attorney and
18 his law firm. The class representative will face a David versus Goliath scenario in opposing the
19 large group of purveyors counsel. In the Santa Maria Groundwater Basin adjudication, because of
20 the large number of groups of landowners, and their respective counsel, participating in the trial, a
21 rough parity between counsel existed. This allowed the landowners to successfully defend the case
22 in Phase III, which eventually led to the settlement entered into by the overwhelming majority of
23 parties to that adjudication. Placing all landowners in one class in this case will benefit the
24 purveyors, by consolidating the parties whose interests they oppose. It will also benefit the dormant
25

26
27 ² This request to limit Class Counsel's representation in settlement negotiations to only the interests
28 of the sub-class leaves one to wonder why Class Counsel wishes to have pumpers as part of the
Modified Class in the first place.

1 overlyers by preventing the formation of any further pumper groups. This is not only the case in the
2 trial of this matter, but additionally in the presently ongoing settlement negotiations.

3 In support of Plaintiff Willis' proposal, Class Counsel indicates that he will vigorously
4 defend the Class' interest in this case. The initial trial phase for which Class Counsel proposes to
5 represent the Modified Class – determination of the Basin's characteristics – will be intensely
6 technical. To AGWA's knowledge, Class Counsel has not hired an expert to represent the interests
7 of Plaintiff Willis or the existing Class in this action. In order to adequately vet the Class Counsel's
8 claims, it would be appropriate for the Court to inquire of him as to his plans to hire an expert and
9 other technical support in this case.

10 Finally, and perhaps most importantly, Plaintiff Willis' proposal would leave all of
11 landowners within the Modified Class, but outside the proposed sub-class, without representation in
12 the present settlement negotiations. AGWA wonders who the Class Counsel believes will represent
13 the Modified Class members that are not within the sub-class and why they should be in the
14 Modified Class at all if their interests are not being represented by Class Counsel. The Partial
15 Objection does not answer these questions, but assumes someone else will carry the torch of these
16 unrepresented pumpers:

17
18 To the extent the interests of the small pumpers diverge from
19 those of the non-pumpers, the reality is that the "pumper interests
20 " are already being aggressively advanced and protected. Thus, there
21 is no need for Class counsel to represent those persons in settlement
22 negotiations. The interests of pumpers are already well represented
23 in such negotiations and the small pumpers in the Class will
24 presumably be treated similarly to other pumpers.

25 (Partial Objection, 5:15-20.) AGWA takes issue with Class Counsel's assumption that because other
26 counsel presently represent the interests of certain pumpers in this action, that the interests of the
27 pumpers Class Counsel proposes be included in the Modified Class will be adequately protected in
28 settlement negotiations. In the Santa Maria Groundwater Litigation, in which many of the counsel
participating in this action also participated, the various groups of pumpers have ended-up situated
much differently from one another. It is likely that the same result will occur in this case, with

RESPONSE TO WILLIS' PARTIAL OBJECTION TO MOTION TO AMEND CLASS CERTIFICATION ORDER

1 different landowners situated differently according to the choices they make in the negotiations.
2 Class Counsel assumes an outcome in the settlement negotiations that likely will not occur and
3 should not be relied upon.³

4 Unfortunately, the inclusion of pumpers in the Modified Class would prevent any further
5 pumper landowner representation in settlement negotiations and increase the cost and the difficulty
6 to the other pumping landowners to participate. This would have the effect of benefiting the
7 dormant overlyers (as well as the purveyors) who are adverse to the interests of the small pumpers in
8 those negotiations.

9 Should the Court, for whatever reason, determine to accept Plaintiff Willis' proposal and
10 issue the Proposed Order, the notice used to inform members of the Modified Class of this action
11 must make excruciatingly clear the limitations that the Class Counsel has asked be placed on him:
12 The Class Notice must make clear to those members of the Modified Class outside the sub-class that
13 they will not be represented in settlement negotiations – that, in fact, the Class Counsel will be
14 negotiating against their interests – and that by remaining in the class they will cause detriment to
15 the interests of the landowners who pump.

16 **III. PLAINTIFF WILLIS' PROPOSAL WOULD PREVENT A COMPLETE AND**
17 **BINDING JUDGMENT IN THIS MATTER**

18 Plaintiff Willis' proposed modification would leave the Court unable to make a binding and
19 final judgment in this case and would effectively leave a large portion of the proposed class without
20 representation. The subject of the lack of compliance with the requirements of the McCarran
21 Amendment, should a landowner class in this action fail to include those landowners receiving
22 public water service, received extensive treatment in the Antelope Valley Groundwater Agreement
23 Association's Response to Motions to Amend Class Definition and the United States' Response to
24 Public Water Suppliers' Motion to Amend or Modify September 11, 2007 Order Certifying Plaintiff

25 _____
26 ³ If Class Counsel is correct in his assumptions, one may also wonder why the purveyors require six
27 separate law firms to represent their interests in the lawsuit and settlement negotiations since
28 purveyors are already being aggressively represented by LA County and purveyors "will presumably
be treated similarly" to other purveyors. In this regard, the presence of six separate law firms would
appear to constitute a waste of public funds.

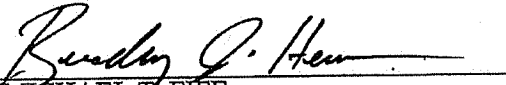
1 Class. AGWA incorporates by reference the relevant portions of those Responses as if they were set
2 forth here in their entirety.

3 **IV. CONCLUSION**

4 For the reasons described above, and those described in its Response to Motions to Amend
5 Class Definition, AGWA repeats its request that the Court maintain a non-pumpers class in this
6 action, that it require the purveyors to individually name and serve all landowners known to be
7 pumping from the Basin, and that the Court require that the notice of class action provide a pumper
8 the opportunity to indicate such status, allowing the purveyors to name and serve that landowner.
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12 Dated: February 20, 2008

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

14 By: 
15 ~~MICHAEL T. FIFE~~
16 BRADLEY J. HERREMA
ATTORNEYS FOR AGWA.
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA,**
3 **COUNTY OF SANTA BARBARA**

4 I am employed in the County of Santa Barbara, State of California. I am over the age of 18
5 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara,
6 California 93101.

7 On February 20, 2008, I served the foregoing document described as:

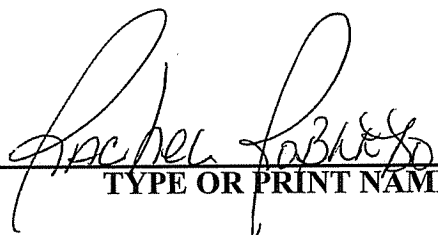
8 **ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION'S RESPONSE**
9 **TO PLAINTIFF WILLIS' PARTIAL OBJECTION TO PUBLIC WATER SUPPLIERS'**
10 **MOTION TO AMEND CLASS CERTIFICATION ORDER**

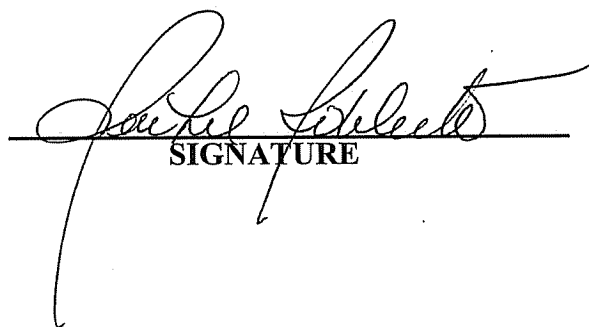
11 on the interested parties in this action.

12 By posting it on the website at 2:30 p.m./a.m. on February 20, 2008. This posting
13 was reported as complete and without error.

14 (STATE) I declare under penalty of perjury under the laws of the State of California
15 that the above is true and correct.

16 Executed in Santa Barbara, California, on February 20, 2008.

17 
18 _____
19 **TYPE OR PRINT NAME**

20 
21 _____
22 **SIGNATURE**

23
24
25
26
27
28 **RESPONSE TO WILLIS' PARTIAL OBJECTION TO MOTION TO AMEND CLASS CERTIFICATION ORDER**