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**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. Lancaster, Diamond  
Farming Co. v. Palmdale Water Dist., Superior  
Court of California, County of Riverside, Case  
No. RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408

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

**EX PARTE APPLICATION TO  
(1) CONTINUE TRIAL DATE;  
AND (2) AMEND THE CASE  
MANAGEMENT ORDER OR, IN  
THE ALTERNATIVE, (3) FOR A  
PROTECTIVE ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND  
DECLARATION OF ROBERT G.  
KUHS IN SUPPORT THEREOF**

Date: January 11, 2013  
Time: 10:00 a.m.  
Place: Telephonic Hearing (Courtcall)

Phase 4 Trial Date: February 11, 2013

**I. NOTICE OF EX PARTE APPLICATION AND APPLICATION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on January 11, 2013 at 10:00 a.m., or as soon thereafter as

the matter may be heard, TEJON RANCHCORP and TEJON RANCH COMPANY (collectively “Tejon”) and GRANITE CONSTRUCTION COMPANY (“Granite”) will apply ex parte for an Order (1) Continuing the Phase 4 Trial Date from February 11, 2013 to May 28, 2013, and (2) Amending the Case Management Order for the Phase 4 Trial (“CMO”), or in the alternative, (3) for a Protective Order pursuant to Code of Civil Procedure section 2025.420 limiting the number of depositions taken by the Public Water Supplier.

This application is made pursuant to Code of Civil Procedure section 128(a), California Rules of Court, rule 3.1332 (c), and Code of Civil Procedure section 2023.010 on the grounds that the Public Water Suppliers have noticed 115 depositions to occur over the course of 15 court days and, under the circumstances, the current deposition and trial schedule as set forth in the CMO is untenable and violates the due process rights of Granite, Tejon and other parties to these coordinated proceedings. This application is also brought to prevent a misuse and abuse of the discovery process.

Dated: January 10, 2013

KUHS & PARKER

By /s/ Robert G. Kuhs  
Robert G. Kuhs, Attorneys for  
Tejon Ranchcorp and Tejon Ranch Company  
and Granite Construction Company

## **II. DECLARATION OF ROBERT G. KUHS IN SUPPORT OF APPLICATION**

I, Robert G. Kuhs, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts in the State of California and counsel of record for Tejon and Granite.
2. On December 12, 2012 the Court issued its Case Management Order for Phase 4 Trial (“CMO”) setting the Phase 4 Trial for February 11, 2013 on the issues of (1) current groundwater production of all parties for the calendar year 2011 and January 1 through

November 30, 2012, (2) proof of claimed reasonable and beneficial use of water for each parcel to be adjudicated, (3) claimed returned flows from imported water and (4) Federal Reserve rights.

3. More than 100 parties have indicated their intent to participate in the Phase 4 Trial.

4. Paragraph 3 of the CMO directed the parties to disclose expert and non-expert witnesses on January 4, 2013 along with a statement as to each witness's availability for deposition during the period January 10 through 31, 2013.

5. On January 7, 2013 counsel for Quartz Hill Water District served, on behalf of the Public Water Suppliers, a Deposition Schedule, a copy of which is attached hereto as **Exhibit A**, accompanied by approximately 115 deposition notices set over a period of 15 days. The deposition notices included lengthy requests for document production even though the CMO does not confer such a right.

6. On January 7, 2013 counsel for the parties held a telephone conference to address deposition scheduling and conflicts as directed by the CMO. The conference call lasted more than 4 hours and 15 minutes, at the conclusion of which 139 depositions had been set to occur in the 15-court-day window allocated by the CMO. A copy of the current proposed schedule is attached hereto as **Exhibit B**.

7. Although the parties and the Court contemplated that "more than one deposition may be scheduled to take place on the same day," (CMO, ¶ 5), the number of depositions currently set ranges from two on January 11, 2013 to **34 depositions on January 29, 2013**.

8. Scores of depositions have not been set for many parties. For example, the State of California designated 16 witnesses but provided deposition availability for only five of the 16 witnesses. Counsel for the State left the conference call early. Consequently, none of the State's

witnesses have been scheduled for deposition.

9. Defendant AV United Mutual Group consists of 15 mutual water companies who designated more than 20 witnesses. Depositions have not yet been scheduled for any of AV United Mutual Group's witnesses.

10. Little Rock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lake Community Services District, Llano Del Rio Water Company, Llano Mutual Water Company and Big Rock Mutual Water Company disclosed numerous witnesses but did not provide available deposition dates until after the January 7, 2013 conference call.

11. The Public Water Suppliers have designated Steve C. Cortner as an expert on water consumption by surface mining operations. My client Granite has an obvious and compelling interest in deposing Mr. Cortner prior to trial. However, as of the date of this declaration, Mr. Cortner's deposition date remains in flux due to scheduling conflicts.

12. Counsel for the Woods Class, Michael McLachlan, has also advised that the court appointed expert has not finished his work and it remains uncertain whether the work will be completed before the Phase 4 Trial commences.

13. Supplemental expert disclosure is set for January 11, 2013. I would estimate that the total number of depositions required to be taken within the 15 court day window provided in the CMO will exceed 160 depositions.

14. During the December 11, 2012 Trial Setting Conference, counsel for several of the Public Water Suppliers, indicated that extensive discovery may not be necessary since the Public Water Suppliers plan to enter into stipulations with many parties whose data is not contested. As of the date of this declaration, I am not aware of any party whose data has been approved by stipulation.

15. The volume of documents produced by the parties in response to the court ordered discovery is staggering. The United States alone produced more than 5,000 pages of documents relating to its water use and alleged reserved rights.

16. Under the current schedule, trial briefs must be posted by January 29, 2013, exhibit and witness lists are due February 1, 2013, and motions in limine are due February 4, 2013. It is unlikely that parties will have certified and executed transcripts for most of the depositions by the February 4, 2013 deadline.

17. Tejon and Granite have each designated two witnesses. I had personally planned on attending the deposition of all experts offered by the Public Water Suppliers, and the Federal Government, and most of the witnesses designated by AVEK, the State of California, the City of Los Angeles, the Sanitation Districts, as well as several depositions of select landowner experts and a number of percipient witness depositions for some of the larger water producers in the AVAA. However, given the current deposition schedule, it will be impossible for me to prepare my witnesses for deposition, appear at and defend those depositions, prepare for the depositions of other parties and experts in this proceeding, draft a trial brief and motions in limine within the time provided in the CMO.

18. I request that the February 11, 2013 trial date be continued and that the CMO be amended as set forth below or, in the alternative, that the court issue a protective order limiting the Public Water Suppliers to no more than 15 depositions without document production.

<b>PROPOSED AMENDED PHASE 4 SCHEDULE</b>		
<b>DATE</b>		<b>EVENT</b>
1/16/2013		Deposition Coordination Call 10:00 a.m.
3/20/2013		Supplemental Expert Disclosure
3/22/2013		Supplemental Expert Coordination Call

4/26/2013	Complete Non-Expert Discovery
5/1/2013	Liaison Committee to Divide Exhibit #'s
5/6/2013	Complete Expert Discovery
5/13/2013	Opening Trial Briefs Due
5/14/2013	Post Witness and Exhibit Lists to Court
5/15/2013	Motions in Limine Due
5/21/2013	Responsive Trial Briefs Due
5/21/2013	Opposition to Motions in Limine Due
5/22/2013	Provide Trial Exhibits to Court
5/28/2013	<b>TRIAL</b>

19. On January 10, 2013, I caused to be filed with the Court notice of this ex parte application to all counsel via posting on the Court's website informing counsel of the date and time of this ex parte application, as well as the relief requested and the grounds on which the application is being made.

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

Dated this 10<sup>th</sup> day of January, 2013, at Bakersfield, California.

/s/ Robert G. Kuhs

Robert G. Kuhs

### **III. POINTS AND AUTHORITIES**

#### **A. Good Cause Exists for A Trial Continuance.**

A trial continuance may be granted upon an affirmative showing of good cause. (Cal. Rules of Court, rule 3.1332.) California courts have held that when the policies of judicial efficiency and the just resolution of cases on their merits collide head-on, "the strong public policy favoring disposition [of a case] on the merits outweighs the competing policy favoring judicial efficiency." (See *Oliveros v. County of Los Angeles*

(2004) 120 Cal.App. 4th 1389, 1396; see also *Estate of Meeker* (1993) 13 Cal.App.4th 1099, 1105-06 (1993) (“a balance must be struck between the trial court’s right to run a tight ship and its obligation to provide a meaningful forum for litigants. . . . Efficiency cannot be favored over justice”).) Courts have also held that if good cause is established, a motion for a trial continuance should be granted. (*Oliveros v. County of Los Angeles, supra*, 120 Cal. App. 4th at 1396.) Indeed, “absent [a lack of diligence or other abusive] circumstances . . . a request for a continuance supported by a showing of good cause usually ought to be granted.” (*Estate of Meeker, supra*, 13 Cal.App.4th at 1105; See *Hernandez v. Super. Ct.* (2004) 115 Cal.App.4th 1242, 1246.)

Subdivision (c) of California Rule of Court, rule 3.1332 sets forth examples of “[c]ircumstances that may indicate good cause.” Such circumstances include “[a] party’s excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts” and “[a] significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.” (Cal. Rules Court, rule 3.1332(c)(6) and (7).) Here, depositions commenced on January 10. There has not been sufficient time between the designation of witnesses on January 4 and this time to obtain the information necessary for these witnesses to be adequately prepared for their depositions. In addition to collecting information in order to prepare the witnesses, the parties must also respond to over 100 document requests associated with the deposition notices. Those document requests were submitted on January 7, 2013. Three days, or even 23 days, is not sufficient time respond to these requests and produce the necessary documents on top of the other pre-trial deadlines facing the parties.

Despite the diligence of the moving parties in meeting the Court’s pretrial deadlines, the moving parties are not able to adequately pursue and protect their interests

in this litigation due to the deposition schedule now before them. The parties attempted to resolve deposition scheduling issues on January 7 during a 4 hour and 15 minute teleconference with over 100 parties participating, but serious issues and conflicts remain. Informal discussions since the January 7 call have not been successful in resolving the remaining issues. Where, as here, the parties' best efforts would be insufficient to permit the parties to adequately participate in witness depositions and trial, a continuance is appropriate.

During the December 11, 2012 Trial Setting Conference, the parties and the Court discussed that, given the aggressive trial schedule, more than one deposition may be required to be set on any given day. The Court will also recall that the Public Water Suppliers assured the parties and the Court that many depositions would not be necessary because the Public Water Suppliers had contemplated stipulating with many of the parties. Neither assumption has come to pass. Neither the court, nor the moving parties contemplated the barrage of depositions set. The Public Water Suppliers noticed 115 depositions over a 15 court day period beginning January 10 and ending on January 31. In total, 139 depositions have been set for this time period. Thirteen depositions were set on January 28, thirty-four depositions on January 29, fourteen depositions on January 30, and twenty-seven depositions on January 31.

The setting of this enormous number of depositions created an unexpected and unreasonable pre-trial schedule. The moving parties will not be able to adequately prepare for or participate in these depositions, and as a result will not be able to adequately assert their interests in the Phase 4 Trial. Despite the parties' diligence in meeting court deadlines, an unanticipated inundation of discovery requests threatens to prevent the parties from adequately preparing for and participating in witness depositions



and trial, a continuance is appropriate.

**B. Additional Factors Support Continuing the Trial Date.**

California Rule of Court, rule 1.1332, subdivision (d), lists other factors that are relevant for consideration when ruling on a motion to continue a trial date. Nearly all of these militate in favor of a continuance.

1. *The proximity of the trial date favors a continuance per Rule 3.1332(d)(1).*

The Court has set a trial date of February 11 for the Phase 4 Trial. As the situation currently stands, in the one month between today and the trial date the parties must prepare over 139 witnesses for deposition, produce documents in response to document requests associated with those depositions, participate in those depositions, designate supplemental witnesses and schedule and take those depositions, and prepare for trial. No party will have the opportunity to conduct follow-up discovery to test the veracity of the statements made in deposition and written discovery. In this case, because the trial date was set less than one month ago, the fast approaching trial date favors granting a continuance.

2. *There have been no previous requests for a continuance per Rule 3.1332(d)(2).*

The moving parties have not previously requested a continuance in this case and the Court has not previously granted any other continuance or extension of time to the moving parties.

3. *The moving parties request a modest extension of time per Rule 3.1332(d)(3).*

The moving parties request a modest continuance of 106 days. The moving parties recognize that the Public Water Suppliers have no interest in settling this case on reasonable terms, and, as a result, wish to try the balance of the case swiftly and

expeditiously. The 106 days reflects the minimum amount of time necessary for the parties participating, numbering over 100, in this case to adequately complete discovery and prepare for the Phase 4 Trial.

4. *None of the parties nor any witnesses will be prejudiced by a continuance per Rule 3.1332(d)(5).*

Indeed, the current schedule severely prejudices all parties in preparing for litigation and the witnesses in preparing for depositions, and effectively preparing this case for the streamlined trial that the court requested.

5. *The interests of justice would be served by a continuance per Rule 3.1332(d)(10).*

The interests of justice would best be served by a continuance that accommodates the parties' need to complete discovery and prepare for trial in a reasonable time frame. The parties' due process rights in litigating this case are threatened by the overly burdensome schedule now before them and violate their rights under the Civil Discovery Act, to complete, not commence, discovery 30 days before trial.

6. *There are no alternative means short of a continuance to address this scheduling issue per Rule 3.1332(d)(4).*

The one alternative to address the above-described issues that give rise to this application for a continuance is for the Court to issue a protective order breaking the Public Water Supplier's monopoly on time and limiting the Public Water Suppliers to 15 depositions, without document production, or one deposition per day so that the landowners, the Federal Government, the Classes, AVEK and other parties can conduct their discovery. The moving parties request such a protective order in the event that a continuance is denied.

7. *Other facts and circumstances relevant to the fair determination of the application favor a continuance per Rule 3.1332(d)(11).*

On January 11, the parties will submit supplemental witness disclosures. There is, quite simply, no time to schedule these depositions. In the best of scenarios, the parties will subsequently have scant time after discovery has ended to prepare for trial.

**C. The Court Has the Power to Provide for the Orderly Conduct of Proceedings.**

The Court has the power, indeed the obligation, to provide for the orderly conduct of proceedings before it, or its officers. (Code of Civ. Proc., § 128(a); *Bloniarz v. Koloson* (1969) 70 Cal.2d 143, 147-148 (“every court of record has powers requisite to its proper functioning as an independent constitutional department of government”).) Here, the current proposal to take more than 139 depositions in 15 court days not only is disorderly, but borders on lunacy and will result in an immense waste of time and financial resources. Furthermore, the proposed schedule denies Tejon and Granite, and other parties to this consolidated proceeding, a fair opportunity to participate in the discovery process and further denies the parties the opportunity to serve or conduct follow-up discovery to test the veracity of the statements made by parties in the court ordered discovery responses and at deposition.

**V. CONCLUSION**

For the foregoing reasons, the moving parties respectfully request that this Court enter an order continuing the trial to May 28, 2013 or such other date as is convenient to the Court, and amending the CMO as set forth herein. In the alternative, the moving parties respectfully request that the Court issue an order limiting the Public Water Suppliers to taking a maximum of 15 depositions, without document production. Quite simply, if the right to participate in pretrial discovery is an important due process right worthy of protection, then no party should object to the continuance. Conversely, if the Public Water Suppliers do not view the right to conduct

pretrial discovery as an important right, then they should have no quarrel with a 15 deposition limit without document production.

Dated: January 10, 2013

Respectfully submitted,

KUHS & PARKER

By /s/ Robert G. Kuhs  
Robert G. Kuhs, Attorney for Tejon  
Ranchcorp and Tejon Ranch Company and  
Granite Construction Company

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