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15 Attorneys for Plaintiff

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17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18
19 **COUNTY OF LOS ANGELES**

20 Coordination Proceeding
21 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

22 ANTELOPE VALLEY GROUNDWATER
23 CASES

(Santa Clara Case No. 1-05-CV-049053,
Honorable Jack Komar)

24 RICHARD A. WOOD, an individual, on
25 behalf of himself and all others similarly
26 situated,

Case No.: BC 391869

**RICHARD WOOD'S NOTICE OF
MOTION AND MOTION IN LIMINE
NO. 1**

27 Plaintiff,

28 v.

LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40; et al.

Defendants.

TO THE COURT AND ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that on January 4, 2010, at 9:00 a.m., in Department 1
of the Los Angeles Superior Court (or such other department that the Court shall

designate), located at 111 North Hill Street, Los Angeles, California, a hearing will be held on plaintiff Richard A. Wood's Motion In Limine Number One for an order excluding any evidence of pumping by the small pumper class in the aggregate or on an individual basis.

The motion is based on this Notice, the attached Memorandum of Points and Authorities, the attached exhibits, and such other and further evidence as the Court adduces at the hearing.

DATED: December 20, 2010

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

By: _____
Michael D. McLachlan
Attorneys for Plaintiff

1 **A. Introduction**

2 Plaintiff Richard Wood (“Plaintiff”) moves this Court for an order in limine
3 excluding any evidence of pumping by the small pumper class, or any individual class
4 member.

5 This Motion is predicated in part upon the Court’s March 8, 2010 ruling that it
6 would hold on approving the work of the court-appointed expert relative to assessing the
7 pumping of the small pumper class until sometime after the phase 3 trial. At the March
8 22, 2010 case management conference, Plaintiff asserted serious potential prejudice
9 should the Court entertain evidence of the small pumper class’ water usage proffered
10 only by the public water suppliers (those arguments are summarized below).

11 At the March 22, 2010 hearing, in response to Plaintiff’s argument, the Court
12 stated that it would only hear evidence of total pumping at the phase 3 trial, and would
13 not hear evidence of individual pumping. This restriction on the phase 3 trial is
14 memorialized in the Court’s orders of March 22, 2010 and May 6, 2010 (at 3:5-8 and
15 3:11-14, respectively). Copies of both orders are attached collectively as Exhibit 1.

16 The public water suppliers’ expert report for the phase 3 trial does contain an
17 analysis of the small pumper class’ water use, which is purely estimated, without any
18 actual data, investigation, or validation assessment. (Summary Expert Report, Appendix
19 D., pp. 20-21, Table D.3-3.) Plaintiff requests an order excluding such evidence from the
20 phase 3 trial, as well as any related oral testimony.

21 **B. The Court Should Not Hear Evidence of the Small Pumper Class Water**
22 **Use at Phase 3 Trial In Absence of Testimony from the Court-Appointed**
23 **Expert**

24 If the public water suppliers are allowed to present evidence of the small pumper
25 class’ water use in absence of hearing evidence from the Court-appointed expert on this
26 issue, and the Court reaches findings of fact on this issue, the class members will have
27 been denied the necessary adequacy of representation, in violation of due process.

28 Prior to notice being provided to the class, class counsel insisted, quite vigorously,

1 that an expert be appointed under Evidence Code section 730 to ensure that class counsel
2 could properly represent the interest of the class. The class members are largely indigent,
3 and have no mechanism for funding their own expert. Class counsel cannot do so
4 because they are prohibited from recovering such expert costs in this context unless
5 appointed by the Court. Because the interests of the class dictated the retention of an
6 expert to perform work related to assessing the water usage of the class members and the
7 class, the Court appointed an expert.

8 By way of the March 8, 2010, ruling refusing to authorize the work of the court-
9 appointed expert, the Court effectively reversed its prior ruling appointing the expert (at
10 least for purposes of the phase 3 trial). The fact that there has been no actual assessment
11 of the individual or collective pumping of the Small Pumper Class is not in dispute. The
12 only potential evidence contained in the summary expert report is entirely estimated
13 without obtaining any actual data or evidence from the small pumpers.

14 The Court should not hear this evidence because to make a finding of fact as to the
15 water usage of the small pumper class would violate due process. Such a factual finding
16 would then be law of the case. When the Small Pumpers endeavor to assert their self-
17 help defense in later phases of this trial, they will be limited by that finding of fact, in
18 whatever timeframe it may apply.

19 If the water suppliers were permitted to offer such un rebutted evidence, Plaintiff
20 and his counsel could not adequately represent the interests of the class, thereby
21 rendering the ultimate judgment meaningless if challenged. Without adequate
22 representation, a resolution of class claims “cannot satisfy due process as to all members
23 of the class.” (*Hesse v. Sprint Corporation* (March 11, 2010) 2010 WL 790340 *4 (citing
24 *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 812).) “To satisfy constitutional
25 due process concerns, absent class members must be afforded adequate representation
26 before entry of a judgment which binds them.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1992)
27 150 F.3d 1011, 1020.) For due process to obtain, the class representative must be able to
28 vigorously prosecute the action on behalf of the class. (*Ibid.*)

1 **C. Conclusion**

2 Richard Wood cannot adequately represent the interest of the class at the Phases 3
3 trial if evidence of the class' water usage is presented. Without the testimony of the
4 Court-appointed expert, class counsel cannot properly rebut the testimony of the water
5 suppliers' experts. Consequently, this court should issue an order in limine precluding
6 any evidence of the water use of the class or its individual members.

7
8 DATED: December 20, 2010

LAW OFFICES OF MICHAEL D. McLACHLAN
LAW OFFICE OF DANIEL M. O'LEARY

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11 By: //s//
12 Michael D. McLachlan
13 Attorneys for Plaintiff
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Exhibit 1

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 ANTELOPE VALLEY GROUNDWATER
12 CASES

Judicial Council Coordination
Proceeding No. 4408

13 Included Consolidated Actions:

Lead Case No. BC 325 201

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
16 Superior Court of California
17 County of Los Angeles, Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MARCH 22, 2010**

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

Hearing Date(s): March 22, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

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

Judge: Honorable Jack Komar

24 Rebecca Lee Willis v. Los Angeles County
25 Waterworks District No. 40
26 Superior Court of California, County of Los
27 Angeles, Case No. BC 364 553

28 Richard A. Wood v. Los Angeles County
Waterworks District No. 40
Superior Court of California, County of Los

2
3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on March 22, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk of
6 Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 The Third Phase of Trial is scheduled for September 27, 2010 at 9:00 a.m. in
10 Department One of this Court. The time of trial is estimated at 10 court days. The Court will be
11 in session for trial Monday through Thursday of each week. If additional days of trial are
12 required, the Court will schedule such after conferring with the parties.

13 The parties shall comply with the provisions of Code of Civil Procedure Section
14 2034.210 and engage in a simultaneous disclosure and exchange of expert information,
15 including any reports prepared by such experts, on July 1, 2010. Any supplemental disclosures
16 and exchange of information shall occur on July 15, 2010. Expert depositions shall be taken
17 between July 15 and August 30, 2010.

18 On July 1, 2010, any party who intends to call non-expert witnesses to provide
19 percipient testimony shall file a statement listing such witness, the subject matter of their
20 testimony, and an estimate of the amount of time required for their testimony on direct.

21 All discovery shall be completed in compliance with the Code of Civil Procedure 30
22 days before trial and all motions shall be heard no later than 15 days before trial.

23 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
24 any responses or opposition shall be filed no later than September 24, 2010.

25 The public water provider parties have essentially alleged that the basin is in overdraft,
26 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
27 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this
28 third phase of trial, the Court will hear evidence to determine whether the basin, as previously

1 defined by the Court in trial phases one and two, is in such overdraft and to determine whether
2 there is a basis for the Court to exercise its equitable jurisdiction, including the implementation
3 of a "physical solution," as prayed for by the public water provider parties. The public water
4 providers have the burden of proof.

5 The Court will not hear any evidence concerning prescription claims nor does it expect
6 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
7 to hear evidence concerning total pumping and total recharge from all sources, with a further
8 breakdown showing the amount of imported water on an annual basis.

9 Any party requiring further clarification of the issues in this third phase of trial is
10 invited to request such clarification and the Court will consider a further case management
11 conference to provide such clarification unless it is a simple matter permitting the Court to
12 issue a clarifying order.

13
14 Dated: March 22, 2010

/s/ Jack Komar

Honorable Jack Komar

Judge of the Superior Court

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 **ANTELOPE VALLEY GROUNDWATER**
12 **CASES**

13 Included Consolidated Actions:

14 Los Angeles County Waterworks District No.
15 40 v. Diamond Farming Co.
16 Superior Court of California
County of Los Angeles, Case No. BC 325 201

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

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

24 Rebecca Lee Willis v. Los Angeles County
25 Waterworks District No. 40
26 Superior Court of California, County of Los
Angeles, Case No. BC 364 553

27 Richard A. Wood v. Los Angeles County
28 Waterworks District No. 40
Superior Court of California, County of Los

Judicial Council Coordination
Proceeding No. 4408

Lead Case No. BC 325 201

**ORDER AFTER CASE
MANAGEMENT CONFERENCE
ON MAY 6, 2010**

Hearing Date(s): May 6, 2010
Time: 9:00 a.m.
Location: Department 1, LASC

Judge: Honorable Jack Komar

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3 The matter came on as a regularly scheduled telephonic Case Management Conference
4 on May 6, 2010 in Department One in the above entitled Court. All parties appeared by
5 telephone. Those parties appearing are listed in the minutes of the Court prepared by the Clerk
6 of Court.

7 The parties having briefed and argued the issues, good cause appearing, the Court makes
8 the following Case Management order:

9 **ORDERS AMENDING THE MARCH 22, 2010 ORDER AFTER CASE**
10 **MANAGEMENT CONFERENCE**

11 The Third Phase of Trial remains scheduled for September 27, 2010 at 9:00 a.m. in
12 Department One of this Court. The time of trial remains estimated at 10 court days. The Court
13 will be in session for trial Monday through Thursday of each week. If additional days of trial are
14 required, the Court will schedule such after conferring with the parties.

15 The Request of Grimmway Enterprises, Inc., Lapis Land Company, LLC, Crystal
16 Organics, LLC and Diamond Farming Company to Modify the March 22, 2010 Case
17 Management Order, posted on April 30, 2010, is granted as follows: the time for parties to
18 comply with the provisions of Code of Civil Procedure Section 2034.210 and engage in a
19 simultaneous disclosure and exchange of expert information, including any reports prepared by
20 such experts, is extended from July 1, 2010 to **July 15, 2010**. The time for any supplemental
21 disclosures and exchange of information is extended from July 15, 2010 to **July 29, 2010**. The
22 time for expert depositions to be conducted is amended to **between July 29, 2010 and**
23 **September 13, 2010**.

24 On July 15, 2010, any party who intends to call non-expert witnesses to provide
25 percipient testimony shall file a statement listing such witness, the subject matter of their
26 testimony, and an estimate of the amount of time required for their testimony on direct.

27 All discovery shall be completed in compliance with the Code of Civil Procedure 30
28 days before trial and all motions shall be heard no later than 15 days before trial.

1 Trial briefs and motions in limine shall be filed no later than September 15, 2010 and
2 any responses or opposition shall be filed no later than September 24, 2010.

3 The public water provider parties have essentially alleged that the basin is in overdraft,
4 that extraction of water on an annual basis exceeds recharge, and that the basin will suffer
5 serious degradation and damage unless the Court exercises its equitable jurisdiction. In this third
6 phase of trial, the Court will hear evidence to determine whether the basin, as previously defined
7 by the Court in trial phases one and two, is in such overdraft and to determine whether there is
8 a basis for the Court to exercise its equitable jurisdiction, including the implementation of a
9 "physical solution," as prayed for by the public water provider parties. The public water
10 providers have the burden of proof.

11 The Court will not hear any evidence concerning prescription claims nor does it expect
12 to hear evidence of individual pumping of water by any party within the basin; rather, it expects
13 to hear evidence concerning total pumping and total recharge from all sources, with a further
14 breakdown showing the amount of imported water on an annual basis.

15 **WOOD PLAINTIFFS' MOTION TO DISQUALIFY**

16 The Motion by the Wood Plaintiffs to Disqualify the Law Firm of Lemieux & O'Neill is
17 denied based upon the information provided to the Court.

18 **WOOD PLAINTIFFS' MOTION FOR ALLOCATION OF EXPERT WITNESS**

19 **FEES**

20 On March 25, 2010, the Wood Plaintiffs submitted a Proposed Order re Motion for
21 Allocation of Expert Witness Fees, providing that the twelve named "Public Water Suppliers"
22 equally share the costs of Entrix in the amount of \$4,784.68. Objections thereto were filed by
23 the Cities of Lancaster and Palmdale. After considering the pleadings filed by all parties, the
24 Court finds the fees incurred to date by Entrix, in the amount of \$4,784.68 are reasonable, but
25 modifies the order to exclude the Cities of Lancaster and Palmdale from obligation as neither of
26 those parties are making claims against the these landowners.

27 The Court hereby orders the following public water suppliers to pay this bill directly to
28 Entrix within fourteen days (14) of this order. The following ten public water suppliers are

1 ordered to pay this bill, in equal shares: Rosamond Community Services District, Los Angeles
2 County Waterworks District No. 40, Littlerock Creek Irrigation District, Palm Ranch Irrigation
3 District, North Edwards Water District, Desert Lake Community Services District, California
4 Water Service Company, Quartz Hill Water District, Palmdale Water District and Phelan Pinon
5 Hills Community Services District.

6 Further, the request of Richard Wood to authorize the court-appointed expert to
7 commence the work outlined in the proposal from Entrix, which was attached to the moving
8 papers, is denied without prejudice based on the decision that no evidence of individual
9 pumping will be heard at the Phase III trial, as set forth in the Court's March 22, 2010 Order.

10 **TRANSFeree/TRANSFEROR OBLIGATION**

11 Regarding the Proposed Order submitted by Tejon Ranchcorp on January 4, 2008 re
12 Jurisdiction over Transferees of Property, previously granted by the Court in open hearings, the
13 Court hereby confirms that it will defer signing said Order until further briefing and hearing of
14 the issues by the parties. The Court requests that the proponent of this transfer document file by
15 May 24, 2010, a formal motion to modify it and apply it appropriately; briefing deadlines shall
16 be per Code of Civil Procedure; the hearing date is set for **June 14, 2010 at 9:00 a.m. in**
17 **Department 1, Los Angeles County Superior Court.**

18 SO ORDERED.
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20 Dated: May 25, 2010

/s/ Jack Komar

Honorable Jack Komar
Judge of the Superior Court

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