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Defendant/Cross Complainant

[See Next Page for Additional Counsel]

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE 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. BC325201;

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 353840, RIC 344436,  
RIC 344668.

**Judicial Council Coordination Proceeding No.  
4408**

Santa Clara Case No. 1-05-CV-049053  
Assigned to the Honorable Jack Komar Dept. I

OPPOSITION TO RICHARD WOOD MOTION  
IN LIMINE 1 BY, LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40, CITY OF  
PALMDALE, LITTLE ROCK CREEK  
IRRIGATION DISTRICT, PALM RANCH  
IRRIGATION DISTRICT, PALMDALE WATER  
DISTRICT, QUARTZ HILL WATER DISTRICT,  
AND CALIFORNIA WATER SERVICE  
COMPANY

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COUNTY WATERWORKS DISTRICT NO. 40

Public Water Suppliers oppose Richard Wood's motion in limine 1 as follows:

1 **I. INTRODUCTION**

2  
3 Richard Wood requests this court to exclude evidence of pumping by the small pumper  
4 class and individual pumpers. In so doing, he effectively is requesting that the Court render void  
5 the subject matter of the entire Phase 3 trial.

6  
7 In order for this court calculate the sustainable yield, it must hear evidence of all outflows,  
8 which includes groundwater pumping from members of the small pumper s class. Wood's request  
9 is unreasonable and would thwart the purpose of this Phase 3 trial, the determination of the  
10 sustainable yield. Were this request to be granted, the Court could not entertain *any* evidence of  
11 outflows from small pumpers. Wood does not dispute the obvious fact that small pumpers,  
12 collectively, have a substantial impact on the amount of overdraft which is the focal point of this  
13 litigation; he does not dispute that without a measurement of that impact, the Court will be unable  
14 to determine the sustainable yield; he does not dispute that measuring the sustainable yield is what  
15 the Phase 3 trial is all about. Rather, Wood asks that the Court entertain no evidence at all, from  
16 any source, concerning this issue. Wood offers no explanation for how the Court is to determine  
17 sustainable yield without the evidence that Wood seeks to exclude.

18  
19 **II. THE ONLY BASIS OF THIS MOTION IS DUE PROCESS INTERPRETED**  
20 **UNDER CASE LAW**

21  
22 Mr. Wood's motion in limine does not claim that amount of water pumped by the small  
23 pumpers is irrelevant, as is contemplated by Evidence Code section 350. Nor does is it claimed  
24 that the evidence's probative value is substantially outweighed by the probability that its admission  
25 will consume undue time or create substantial danger of undue prejudice, confusion of the issues,  
26 pursuant to Evidence Code section 352.

1 The sole basis of Mr. Wood's request to exclude this vital evidence is that to allow the  
2 introduction of this evidence would violate due process. The requirements of due process do not  
3 include advance payment of expert witnesses by someone other than the party or the party's  
4 counsel; due process means notice of the issues to be determined at the trial (which Wood has had  
5 for a long time), an *opportunity* to offer his own evidence relevant to those issues (an opportunity  
6 which Wood has enjoyed for many months but apparently not chosen to avail himself of), and an  
7 opportunity to be heard examining the relevant evidence and offering argument based upon it,  
8 before a fair and impartial finder of fact (which he will be afforded at the Phase 3 trial). Due  
9 process also requires that Wood have a meaningful opportunity to appeal an adverse judgment,  
10 which portion of his due process right is obviously not yet mature since no judgment as to these  
11 issues has yet been rendered.

12  
13 Considering that the amount of water pumped by small pumpers is a necessary component  
14 of a determination of safe yield, by bringing this motion, Mr. Woods is effectively requesting this  
15 court reconsider its March 22, 2010 case management order, and every subsequent order wherein  
16 this court stated that the Phase 3 trial would determine safe yield.

17  
18 **III. NO AUTHORITY HAS BEEN PROVIDED THAT THE TESTIMONY OF A**  
19 **COURT APPOINTED EXPERT IS NECESSARY TO SATISFY DUE PROCESS**  
20

21 Mr. Wood has not cited *any* authority for the proposition that due process requires this  
22 Court hear the testimony of a Court appointed expert.

23  
24 The cases cited by Mr. Wood, *Hesse v. Sprint Corporation* (9th Cir. 2010) 598 F.3d 581  
25 and *Hanlon v. Chrysler Corporation* (9th Cir. 1998) 150 F.3d 1011, require that the class plaintiff  
26 adequately represent the class members, not the class plaintiff's attorney, as stated in the motion.  
27 In this case, the class plaintiff – Richard A. Wood, not Michael D. McLachlan – is the one whose  
28 ability to adequately represent the small pumpers at the trial is even implicated by the argument at

1 bar. Nor is there any claim that Wood or Wood's counsel have been denied the opportunity to  
2 learn what that expert will say or that they disagree with those claims in any way that cannot be  
3 adequately addressed through normal trial procedures such as cross-examination.  
4

5 An analysis of the *Hesse* case readily demonstrates why it does not apply to the matter at  
6 bar. *Hesse* concerned itself with a settlement agreement by a prior class representative in a large  
7 consumer products case. The predecessor class representative did not share the same claim as  
8 Hesse. Thus, the prior class representative was not held to have adequately represented the new  
9 class, because the new class, represented by Hesse, presented a different set of injuries.  
10 Furthermore, the predecessor class representative had a conflict of interest with those members of  
11 the class of plaintiffs represented by Hesse.  
12

13 The *Hesse* case does not apply to testimony of a court appointed expert. The representation  
14 discussed in *Hesse* requires that the class representative possess the same interest, suffer the same  
15 injury, and not have a conflict with the class he purports to represent. There is no claim at bar that  
16 Wood has different interests, different claims of injury, or conflicts, with other small pumpers.  
17 There is no claim that the evidence which Defendants' experts will proffer on this subject is in any  
18 way incorrect, prejudicial, questionable, or even necessarily adverse to the interests of the Wood  
19 class.  
20

21 The *Hanlon* case, also cited by Wood, similarly required merely an absence of conflict of  
22 interest to determine adequacy of representation. In addition, the *Hanlon* Court stated that the  
23 named plaintiff and their counsel were to vigorously prosecute the action. *Hanlon* does not require  
24 the court hear the testimony of a court appointed expert. In *Hanlon*, the plaintiffs paid for their  
25 own experts. Woods argues today that this means that an expert must be appointed in every class  
26 action case, but offers no legal authority to support that proposition. Nor is it clear that the cost of  
27 the expert which might have been advanced by Woods' would not be reimbursable, particularly  
28

1 upon a showing that the result of the case to which that expert contributed was of substantial  
2 benefit to the class.

3  
4 **IV. THE TESTIMONY REGARDING THE SELF HELP DEFENSE OF THE SMALL**  
5 **PUMPER LANDOWNERS IS NOT RELEVANT TO THE PHASE 3 TRIAL**  
6

7 Wood seeks an expert to testify regarding the amount of water needed for members of his  
8 class to exercise the self help defense to the Public Water Suppliers' prescription claims.

9  
10 The issue for this Phase 3 trial will be the safe yield, the calculation of which will  
11 necessarily include the amount was water pumped by the small pumpers represented by Wood.  
12 That number will be part of the larger Municipal and Industrial category of groundwater pumpers,  
13 which will in turn be a part of the larger category of groundwater outflows. Obviously, without an  
14 understanding of the total outflows, the amount of safe yield cannot be found by the Court.

15  
16 The determination of this number will not limit or prejudice the ability of the small  
17 pumpers to exercise their self help defense. For example, the safe yield determination by this court  
18 will be the current safe yield of the basin. The members of the Wood class are persons who have  
19 ever pumped groundwater on their property. The class therefore would include persons who do  
20 not currently pump, and would thus not be included in the calculation of current safe yield.

21  
22 **V. CONCLUSION**  
23

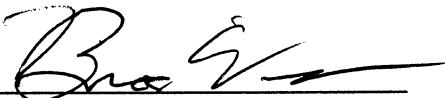
24 This court's determination of safe yield at the Phase 3 trial is an intermediate ruling, and as  
25 has been often reiterated by this court, can be revisited by Wood at a later date. Additionally, a  
26 determination of safe yield will not limit Wood from proving his self help defense to any Public  
27 Water Supplier prescription claim.  
28

1           There has been no showing of prejudice to the Wood class. There has been no showing of  
2 any denial of due process. There has been no showing of irrelevant, cumulative, or prejudicial  
3 evidence being introduced to the trial of this matter. There has, however, been a request to exclude  
4 relevant, material, and critical evidence, the exclusion of which would render insubstantial  
5 whatever result the Court reaches at the trial. That request should be denied.  
6

7 Dated: December 28, 2010

Respectfully Submitted,

8  
9 CHARLTON WEEKS LLP

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12 Bradley T. Weeks

13 Attorney for Quartz Hill Water District  
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**PROOF OF SERVICE**

I am employed in the aforesaid county, State of California; I am over eighteen years of age and not a party to the within action; my business address is 1007 West Avenue M-14, Suite A, Palmdale, California, 93551.

On December 29, 2010, at my place of business at Palmdale, California, a copy of the following DOCUMENT(s):

OPPOSITION TO RICHARD WOOD MOTION IN LIMINE 1 BY, LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40, CITY OF PALMDALE, LITTLE ROCK CREEK IRRIGATION DISTRICT, PALM RANCH IRRIGATION DISTRICT, PALMDALE WATER DISTRICT, QUARTZ HILL WATER DISTRICT, AND CALIFORNIA WATER SERVICE COMPANY

By posting the DOCUMENT listed above to the Santa Clara Superior Court website in regard to the Antelope Valley Groundwater Matter:

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

Executed on December 29, 2010

  
Gayle Fernald