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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

City of Los Angeles; Orange County Sanitation District; County
Sanitation District No. 2 of Los Angeles County; Responsible
Biosolids Management, Inc.; R&G Fanucchi Farms, Inc.; Shaen
Magan, both individually and d/b/a Honey Bucket Farms and Tule
Ranch/Magan Farms; Western Express, Inc.; Sierra Transport, Inc.;
California Association of Sanitation Agencies,

PLAINTIFF(S)

v.

County of Kern; Kern County Board of Supervisors,
DEFENDANT(S).

CASE NUMBER

04.06 5094

FILED

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
James J. Dragna of Bingham McCutchen LLP, whose address is:
355 S. Grand Ave., Suite 4400
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an answer to the complaint _____ amended complaint counterclaim cross-claim
which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief
demanded in the complaint.

AUG 15 2006

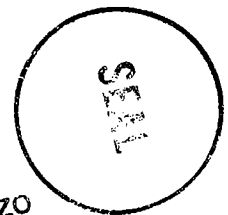
Clerk, U.S. District Court

Dated: _____

By: DENISE H. LAZO

Deputy Clerk

(Seal of the Court)



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16 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 CITY OF LOS ANGELES; ORANGE
18 COUNTY SANITATION DISTRICT;
COUNTY SANITATION DISTRICT NO. 2
19 OF LOS ANGELES COUNTY;
RESPONSIBLE BIOSOLIDS
20 MANAGEMENT, INC.; R&G FANUCCHI,
INC.; SHAEN MAGAN, both individually
21 and d/b/a HONEY BUCKET FARMS and
TULE RANCH/MAGAN FARMS;
22 WESTERN EXPRESS, INC.; SIERRA
TRANSPORT, INC.; CALIFORNIA
23 ASSOCIATION OF SANITATION
AGENCIES,

24 Plaintiffs,

25 v.

26 COUNTY OF KERN; KERN COUNTY
BOARD OF SUPERVISORS,

27 Defendants.
28

No.

COMPLAINT

FILED
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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV-06-5004
VEM

1 Plaintiffs City of Los Angeles, Orange County Sanitation District,
2 County Sanitation District No. 2 of Los Angeles County, Responsible Biosolids
3 Management, Inc., R&G Fanucchi, Inc., Shaen Magan (individually and d/b/a
4 Honeybucket Farms and Tule Ranch/Magan Farms), Western Express, Inc., Sierra
5 Transport, Inc., and California Association of Sanitation Agencies allege as
6 follows:

7 **I. INTRODUCTION**

8 1. This case concerns whether one of California's 58 counties can
9 unilaterally disrupt a statewide regulatory scheme and impede safe commerce
10 regarding a commodity that is central to modern wastewater treatment -- biosolids,
11 the recyclable, organic product from treated wastewater. Plaintiffs are a city, two
12 public sanitation districts, the state trade association representing California
13 sanitation agencies, contractors, trucking companies and farmers who treat
14 hundreds of millions of gallons of wastewater on a daily basis and through that
15 process generate, manage, and reuse biosolids in Southern California and Kern
16 County. They bring this suit because Defendant Kern County adopted an initiative
17 to ban the land application of biosolids in the unincorporated areas of the county
18 ("the Kern Ban"), in violation of the federal and state laws that govern the use of
19 this organic fertilizer and in contravention of Plaintiffs' constitutional rights. The
20 Kern Ban blocks sound biosolids management in California, is causing Plaintiffs to
21 seek alternative ways to either recycle or dispose of their biosolids at a cost of
22 millions of dollars and great environmental harm, and is depriving marginal Kern
23 farmland of this nutrient rich product. The intent and effect of the Kern Ban are to
24 discriminate against biosolids from urban communities in Southern California; by
25 its own terms, the Ban allows continued land application by cities in Kern County
26 just a few miles from the fields owned or used by Plaintiffs.

27 2. The government Plaintiffs (City of Los Angeles, Orange
28 County Sanitation District, and County Sanitation District No. 2 of Los Angeles

COMPLAINT

1 County) have rights and under federal and California law, as well as Kern
2 County's prior biosolids ordinance, that allow them to generate biosolids and then
3 transport these materials to Kern County for recycling through land application on
4 farm fields. In the case of Plaintiff City of Los Angeles, it owns the farm that the
5 Kern Ban intends to bar from receiving biosolids. The farm and contractor
6 Plaintiffs (R&G Fanucchi Farms, Responsible Biosolids Management, Sierra
7 Trucking and Shaen Magan) operate under permits and the same laws to manage
8 and recycle the biosolids and use the material to improve the quality of the soil and
9 grow crops.

10 3. Since the early 1990s, the Plaintiffs and other California
11 communities, businesses and farms have successfully recycled biosolids in Kern
12 County. Over the years, the Plaintiffs have complied with the biosolids ordinances
13 adopted by Kern County that regulate health and safety standards for the land
14 application of biosolids in the County. The Kern ordinances provided detailed
15 requirements for monitoring the quality and controlling the use of biosolids and in
16 large part complemented federal and state regulations. The Plaintiffs have invested
17 millions of dollars on wastewater treatment plant changes and management
18 improvements to meet Kern's exacting standards for biosolids quality and
19 monitoring.

20 4. However, on July 11, 2006, Kern County declared the results of
21 a June 6, 2006 county ballot initiative that bans the land application of biosolids in
22 the unincorporated areas of the county. The Kern Ban flatly prohibits Plaintiffs'
23 recycling of biosolids and allows only six months for a phase-out of land
24 application, with a provision for a few more months' grace period in the County's
25 discretion upon a showing of "hardship."

26 5. The Kern Ban directly conflicts with comprehensive federal and
27 state programs which regulate biosolids and encourage their recycling through land
28 application. The Kern Ban has no rational basis, discriminates against a valuable

1 fertilizer, and impermissibly bans an article in interstate commerce. The Kern Ban
2 is illegal, renders worthless significant investments the Plaintiffs have made in
3 their existing land application programs, and will impose millions of dollars in
4 costs on Plaintiffs to find alternative locations for reuse or disposal of their
5 biosolids.

6 6. For example, the Kern Ban eviscerates the purchase by Plaintiff
7 City of Los Angeles, at a cost of almost \$10,000,000, of a farm in Kern County
8 dedicated to the beneficial recycling of biosolids, as well as the investment of
9 several additional million dollars the City made to construct improvements on the
10 property to support its biosolids recycling program. The Kern Ban also renders
11 superfluous the more than \$16 million the City spent on improvements to its
12 wastewater treatment facilities to meet previous land application regulations
13 imposed by Kern County.

14 7. Accordingly, Plaintiffs bring this case to have the Kern Ban
15 enjoined and declared unlawful.

16 **II. JURISDICTION AND VENUE**

17 8. The Court has jurisdiction over this action pursuant to 28
18 U.S.C. § 1331 (federal question), 28 U.S.C. § 1337 (supplemental jurisdiction), 28
19 U.S.C. § 1343 (§ 1983 jurisdiction), and 28 U.S.C. § 2201 (declaratory judgment).

20 9. For purposes of the declaratory relief sought in this Complaint,
21 an actual case or controversy within the meaning of 28 U.S.C. § 2201 (declaratory
22 judgment) exists between Plaintiffs and Defendants as a result of Kern County's
23 enactment of the Ban and its conflict with the Plaintiffs' rights to land apply
24 biosolids under federal and state law and previous Kern County ordinances.
25 Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. § 2201 and related
26 preliminary and permanent injunctive relief pursuant to Fed. R. Civ. P. 65.

27 10. Venue lies in the Central District of California, the District
28 wherein Defendant Kern County has blocked lawful commerce in biosolids, where

1 the impacts of the Kern Ban will be most felt, where a substantial part of the events
2 giving rise to the claims occurred, and a substantial part of the property that is the
3 subject of this action is situated.

4 **III. PARTIES**

5 **A. Plaintiffs**

6 11. All Plaintiffs are either (i) government agencies that operate
7 publicly owned treatment works (POTWs) regulated under the Clean Water Act;
8 (ii) an association that includes such agencies as its members; (iii) farmers who
9 land apply biosolids in Kern County; or (iv) businesses under contract to supervise
10 and implement the land application of biosolids or transport biosolids.

11 12. Plaintiff City of Los Angeles (“City”) operates a vast and
12 complex wastewater treatment and collection system, which is considered to be
13 one of the world’s largest “separate” sewage collection and treatment systems.
14 Included in that system are two wastewater treatment plants that generate biosolids
15 that are recycled in Kern County: Hyperion and Terminal Island, located adjacent
16 to the Pacific Ocean. The City also owns Green Acres Farm in Kern County where
17 the City recycles biosolids, pursuant to permits and authorizations from Kern
18 County, the state of California, and EPA.

19 A. On February 19, 1987, the City entered into an Amended
20 Consent Decree (“ACD”) in *United States v. City of Los Angeles*, Case No. 77-
21 3047 HP. The ACD prohibited ocean dumping of biosolids by the City. As
22 described in ¶ 33 below, the Integrated Waste Management Act (“IWMA”),
23 enacted by the California legislature in 1989, required localities to use recycling
24 and source reduction to reduce the amount of solid waste (including sewage
25 sludge) going into landfills. The IWMA required counties to adopt waste
26 management plans demonstrating specifically how the solid waste stream would be
27 recycled or reduced by specific amounts. In response to those two developments,
28 the City began working with farmers in Kern County to land apply biosolids on

1 various properties in the early 1990s. In approximately 1992, the Kern County
2 Water Agency, Kern County Agricultural Commissioner, UC Cooperative
3 Extension, and US Soil Conservation Service located in Kern County identified for
4 Plaintiff Responsible Biosolids Management, Inc. (RBM) an ideal location in the
5 County for land application of the City's biosolids. RBM has applied biosolids at
6 this location since approximately 1994. In 1999, after several years of successful
7 land application at this site, the City purchased the farm (hereinafter Green Acres
8 Farm), at a cost of \$9,630,000. The City made this significant investment to
9 guarantee an optimal site and controlled environment for its land application
10 program, as well as to ensure full City oversight of the program. The City now
11 employs a full-time staff of farm workers, contractors and employees to oversee its
12 operations at Green Acres Farm.

13 B. The City contracts with Plaintiff RBM to administer its
14 land application program at Green Acres Farm. To implement the City's program
15 at Green Acres, RBM has held permits for land application since 1995. RBM
16 takes responsibility for on-site testing, and determines the quantity of biosolids to
17 be applied to each field, and works with the City's contract farmer, Plaintiff R&G
18 Fanucchi, Inc. ("Fanucchi Farms"). RBM also subcontracts with Plaintiff Sierra
19 Transport to transport biosolids from the City's Hyperion and Terminal Island
20 Treatment Plants to Green Acres. RBM holds a permit for land application of
21 biosolids from the Kern County Environmental Health Services Department. It is
22 also authorized to land apply biosolids at Green Acres Farm under permits issued
23 by the Central Valley Regional Water Quality Control Board (Regional Water
24 Board), which is the regulatory agency charged with protecting the water quality of
25 surface and ground waters in the Central Valley. The City also holds a permit
26 issued by the Regional Water Board for use of treated wastewater from the City of
27 Bakersfield for irrigation at Green Acres Farm.

28

1 C. Green Acres Farm is located in Kern County,
2 approximately 15 miles southwest of Bakersfield. It is zoned as A-Exclusive
3 Agriculture. In 2004-05, Plaintiff Fanucchi Farms planted 4,845 acres with alfalfa,
4 corn, wheat, sudan and milo. Like the biosolids, these crops are items in interstate
5 commerce, and are sold to local dairy farms and export markets as animal feed.
6 Biosolids provide the primary source of nutrients in the otherwise alkaline, saline
7 soil. Treated wastewater (effluent) from the Bakersfield sewage treatment plant is
8 used for irrigation at Green Acres, furthering the recycling goals of the farm.

9 13. Plaintiff County Sanitation District No. 2 of Los Angeles
10 County operates wastewater treatment plants in Los Angeles County that generate
11 biosolids that are recycled in Kern County by Plaintiff Shaen Magan.

12 14. Plaintiff Orange County Sanitation District operates wastewater
13 treatment plants in Orange County that generate biosolids that are recycled in Kern
14 County by Plaintiff Shaen Magan.

15 15. Plaintiff Responsible Biosolids Management, Inc. is a small
16 business in Lompoc, California that has a contract with the City of Los Angeles to
17 manage its biosolids recycling program.

18 16. Plaintiff R&G Fanucchi, Inc. is a family farming business in
19 Kern County that has a contract with the City of Los Angeles to use biosolids as a
20 fertilizer and soil amendment at Green Acres Farm to grow and sell crops.

21 17. Plaintiff Shaen Magan is a farmer who has a contract with
22 Orange County Sanitation District and the County Sanitation District No. 2 of Los
23 Angeles County to land apply biosolids generated by these agencies at Honey
24 Bucket Farms and Tule Ranch in Kern County, which Magan owns. Magan
25 transports biosolids for this land application through Plaintiff Western Express,
26 Inc.

27 18. Plaintiff Sierra Transport, Inc. is a small business in Kern
28 County that hauls biosolids from Los Angeles to Green Acres Farm.

1 19. Plaintiff California Association of Sanitation Agencies
2 (“CASA”) is a non-profit mutual benefit corporation organized under California
3 law. CASA’s members include public agencies, cities, special districts and joint
4 powers authorities engaged in the collection, treatment, disposal or reclamation of
5 wastewater, including Plaintiffs City, County Sanitation District No. 2 of Los
6 Angeles County, and Orange County Sanitation District. CASA’s mission is to
7 provide proactive leadership, innovative solutions, and timely education and
8 information to CASA members, legislators, and the public, and to promote
9 partnerships on wastewater issues with other organizations, so that sound public
10 health and environmental goals may be achieved. CASA’s biosolids program is
11 intended to promote the environmentally sound recycling of biosolids, to develop
12 and maintain a system of sharing up to date, accurate, science-based biosolids
13 information, and to work to avoid biosolids recycling land application bans, such
14 as the Kern Ban, on behalf of its members.

15 **B. Defendants**

16 20. Defendant Kern County is a local governmental entity located
17 in California’s Central Valley.

18 21. Defendant Kern County Board of Supervisors is the governing
19 body of Kern County and is a Defendant in its official capacity.

20 **IV. STATEMENT OF FACTS**

21 **A. Biosolids and Their Use in California and at Green**
22 **Acres Farm**

23 22. Biosolids are nutrient-rich organic materials that are solid
24 residuals from the treatment of municipal wastewater. All sewage treatment
25 plants, regardless of their location, process wastewater from homes and businesses,
26 resulting in sewage sludge that in most instances is further treated pursuant to
27 federal and state regulations to produce a useful, recyclable product -- biosolids.
28 Biosolids are recycled and applied to fertilize and condition soil to stimulate

