

1 ROBERT E. DOUGHERTY [SBN 41317]
2 WILLIAM A. HAUCK [SBN 202669]
3 JESSE T. MORISON [SBN 247185]
4 **COVINGTON & CROWE, LLP**
5 **ATTORNEYS AT LAW**
6 1131 West Sixth Street, Suite 300
7 Ontario, California 91762
8 (909) 983-9393; Fax (909) 391-6762

(SPACE BELOW FOR FILING STAMP ONLY)

9 Attorneys for White Fence Farms Mutual Water Co. Inc., El Dorado Mutual Water Co., West
10 Side Park Mutual Water Co., Shadow Acres Mutual Water Co., Antelope Park Mutual Water
11 Co., Averydale Mutual Water Co., Sundale Mutual Water Co., Evergreen Mutual Water Co.,
12 Aqua J Mutual Water Co., Bleich Flat Mutual Water Co., Colorado Mutual Water Co.,
13 Sunnyside Farms Mutual Water Co., Land Projects Mutual Water Co., Tierra Bonita Mutual
14 Water Co. and Landale Mutual Water Co.; **collectively known as A.V. United Mutual Group**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

11
12 **ANTELOPE VALLEY**
13 **GROUNDWATER CASES**

14 Included Actions:

14 Los Angeles County Waterworks District
15 No. 40 v. Diamond Farming Co., Superior
16 Court of California, County of Los Angeles,
17 Case No.: BC 325201;

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

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

23 Rebecca Lee Willis v. Los Angeles County
24 Waterworks District No. 40, et al.

Judicial Council Coordination Proceeding
No. 4408

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

**A.V. UNITED MUTUAL GROUP'S
OBJECTION TO MOTION FOR CLASS
CERTIFICATION**

DATE: August 11, 2008

TIME: 9:00 a.m.

DEPT: 1

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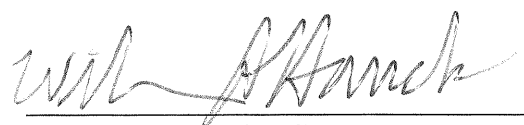
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Cross-Defendants and Cross-Complainant A.V. United Mutual Group submits its Memorandum of Points and Authorities in opposition to Motions for Class Certification.

Dated: July 8, 2008

COVINGTON & CROWE, LLP



ROBERT E. DOUGHERTY
WILLIAM A. HAUCK
Attorneys for A.V. United Mutual
Group, Cross-Defendant/Cross-
Complainant

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 In his First Amended Complaint Plaintiff, RICHARD A. WOOD, an individual,
5 on behalf of himself and all others similarly situated, has requested this court to certify a
6 class of property owners within the adjudication area of the Antelope Valley
7 Groundwater Basin, to be designated in this action. The proposed class has been defined
8 as follows:

9 “All private (i.e. non-governmental) persons and entities that own real
10 property within the basin, as adjudicated and that have been pumping on
11 their property within the five year period preceding the filing of this action.
12 The Class excludes the defendants herein, any person, firm, trust,
13 corporation, or other entity in which any defendant has a controlling
14 interest or which is related with any of the defendants, and the
15 representatives, heirs, affiliates, successors-in-interest or assigns of any
16 such excluded party. The Class also excludes all persons and entities to the
17 extent their properties are connected to a municipal water system, public
18 utility, or mutual water company from which they receive water service, as
19 well as all property pumping 25 acre-feet per year or more on an average
20 annual basis during the class period.”

21 A.V. United Mutual Group objects to the class definition, as it is over-inclusive
22 and would create confusion among its shareholders. For the reasons stated below, A.V.
23 United Mutual Group requests the Court not to certify the class as defined, and to certify
24 an alternative class definition that would not create an undue burden on its shareholders.
25 A.V. United Mutual Group proposes that all shareholders of mutual water companies be
26 excluded from the class, not only those who are currently connected to and receive water
27 from the mutual’s system, but all other shareholders who have the right to connect but
28 have yet to do so. That change in definition would relieve potential confusion from the

1 shareholders.

2 **II.**

3 **THE PROPOSED CLASS IS OVER-INCLUSIVE.**

4 The proposed class, as currently defined, would have some mutual water company
5 shareholders in the class and some outside of it. According to the proposed definition,
6 those shareholders who are currently connected to and receive water from the mutual's
7 system would be excluded from the class, but all other shareholders-those who have the
8 right to connect to the mutual's system but have yet to do so-would be included in the
9 class. The definition improperly treats individual mutual water company shareholders
10 differently, based on whether they have connected to the system or not.

11 A.V. United Mutual Group proposes the following class definition for the Wood
12 class:

13 "All private (i.e. non-governmental) persons and entities that own real
14 property within the basin, as adjudicated and that have been pumping on
15 their property within the five year period preceding the filing of this action.
16 The Class excludes the defendants herein, any person, firm, trust,
17 corporation, or other entity in which any defendant has a controlling
18 interest or which is related with any of the defendants, and the
19 representatives, heirs, affiliates, successors-in-interest or assigns of any
20 such excluded party. *The Class also excludes shareholders of mutual
21 water companies and all persons and entities to the extent their properties
22 are connected to a municipal water system or public utility from which
23 they receive water service*, as well as all property pumping 25 acre-feet per
24 year or more on an average annual basis during the class period."

25 By excluding all shareholders of mutual water companies from this class, the
26 incongruity of "half in, half out" will not exist. A.V. United Mutual Group comprises the
27 great majority of the mutual water companies in the Antelope Valley. All their
28 shareholders are represented in this action. The shareholders should not be included in

1 the class.

2 **III.**

3 **THE PROPOSED CLASS DEFINITION WOULD CREATE CONFLICTING**
4 **INTERESTS WITHIN THE CLASS.**

5 Under California law, two basic requirements must exist to sustain a class action.
6 “The first is existence of an ascertainable class, and the second is a well-defined
7 community of interest in the questions of law and fact involved.” *Vasquez v. Superior*
8 *Court (Karp)* (1971) 2Cal.3d, 800. “An ascertainable class must be established prior to
9 certification of any class action.” *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 845.
10 Whether a class is ascertainable is determined by examining (1) the class definition, (2)
11 the size of the class, and (3) the means available for identifying the class members. *Reyes*
12 *v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271. Defining
13 the class is of critical importance because it identifies the persons (1) entitled to relief, (2)
14 bound by a final judgment. The definition must be precise, objective, and presently
15 ascertainable.

16 The “community of interest” requirement embodies three separate factors: (1)
17 predominant common questions of law or fact; (2) class representatives whose claims or
18 defenses are typical of the class, and (3) class representatives who can adequately
19 represent the class. *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. The
20 mutual water company shareholders’ claims or defenses are not typical of the class
21 currently defined by Plaintiff Wood.

22 “The purported class representative's claim must be “typical” but not necessarily
23 identical to the claims of other class members. It is sufficient that the representative is
24 *similarly situated . . .*” *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 45. Here, Plaintiff
25 Wood is not similarly situated to those holding shares in a mutual water company.

26 “In the absence of California law to the contrary, we look to the federal rule for
27 guidance . . .” *Simons v. Horowitz, supra* at 841. Federal rules state that the Court may
28 modify the definition of a proposed class if such modification will remedy an inadequacy

1 in the plaintiff's definition. *Jackson v. National Action Financial Services, Inc.* (2005)
2 227 F.R.D. 284. Also, leave to amend the complaint in a class action to redefine the class
3 is to be freely given, except where prejudice may result . . ." *In re New York City*
4 *Municipal Securities Litigation* (1980) 87 F.R.D. 572. In the current action, Plaintiff's
5 Counsel has stated he does not object to the proposed re-definition of the class. The
6 Court should direct Plaintiff to amend the class definition and grant leave to amend the
7 class definition in the First Amended Complaint as indicated above. In the alternative,
8 the Court should amend the class definition to properly exclude those shareholders in
9 mutual water companies.

10 **IV.**

11 **CONCLUSION**

12 Based on the above, A.V. United Mutual Group asks the Court to direct Plaintiff
13 RICHARD WOOD to amend the First Amended Complaint to reflect the class definition
14 requested, and grant sufficient time to amend the pleadings. In the alternative, A.V.
15 United Mutual Group asks the Court to modify the class definition in this action to
16 exclude all shareholders of mutual water companies from the prospective class.

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18 Dated: July 8, 2008

COVINGTON & CROWE, LLP

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ROBERT E. DOUGHERTY
WILLIAM A. HAUCK
Attorneys for A.V. United Mutual
Group, Cross-Defendant/Cross-
Complainant

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2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the
5 age of 18 and not a party to the within action; my business address is Covington & Crowe,
6 LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

7 On **July 9, 2008**, I served the foregoing document described as **A.V. UNITED
8 MUTUAL GROUP'S OBJECTION TO MOTION FOR CLASS CERTIFICATION**
9 on the interested parties in this action:

10 by posting the document listed above to the Santa Clara County Superior Court e-
11 filing website under the Antelope Valley Groundwater matter pursuant to the
12 Court's Order dated October 27, 2005.

13 by placing the original a true copy thereof enclosed in a sealed envelope
14 addressed as follows:

15 BY MAIL

16 * I deposited such envelope in the mail at Ontario, California. The envelope
17 was mailed with postage thereon fully prepaid.

18 As follows: I am "readily familiar" with the firm's practice of collection and
19 processing correspondence for mailing. Under that practice it would be deposited with
20 U.S. Postal Service on that same day with postage thereon fully prepaid at Ontario,
21 California, in the ordinary course of business. I am aware that on motion of the party
22 served, service is presumed invalid if postal cancellation date or postage meter date is
23 more than one day after date of deposit for mailing in affidavit.

24 **BY PERSONAL SERVICE** I delivered such envelope by hand to the offices of
25 the addressee.

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

28 Executed on **July 9, 2008**, at Ontario, California.

29
30 
31 DOLORES C. CRUZ