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(SPACE BELOW FOR FILING STAMP ONLY)

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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. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist., Superior Court of California, County of Riverside, Case Nos.: RIC 353 840, RIC 344 436, RIC 344 668
Rebecca Lee Willis v. Los Angeles County 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 BRIEF
SUBMITTED PURSUANT TO COURT
ORDER OF JULY 21, 2008**

DATE: August 11, 2008
TIME: 9:00 a.m.
DEPT: 1

A.V. United Mutual Group hereby submits its brief pursuant to the Court's Order of July 21, 2008.

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I.

SUB-BASIN VERSUS BASIN DETERMINATION.

It is imperative that the next phase of the trial, Phase II, be utilized solely to determine whether the Antelope Valley is comprised of distinct sub-basins or a generalized interconnected basin. This determination will then provide the springboard for the parties to formulate the next level of inquiry as to safe yield and overdraft in an efficient in cost effective manner. The failure to separate these determinations will cause inefficiency, confusion, and a loss of judicial resources as half of the testimony presented will be needless as it is dependent upon the determination of the basin issue. The procedure followed in the Santa Maria Valley Water Conservation District vs. City of Santa Maria, Lead Case No. 1-97-CV770214, is instructive. The Court in that case made a determination as to the characteristics of the basin before delving into the overdraft and safe yield arena. At the very least the next phase of trial should be bifurcated to determine the basin before testimony is presented regarding safe yield and overdraft. It is a logical progression that each phase of trial should build on the prior phase to narrow the issues and promote economy of recourses. A lumping of distinct issues together without making the necessary pre-requisite determinations will only cause an overlap of fruitless testimony and a confusion of issues.

II.

THE PROPER VENUE IS LANCASTER.

This case should be heard in Lancaster branch of the Los Angeles County Superior Court as it is a central and accommodating forum in which to litigate this matter. Since water rights are real property, it is mandatory that an action pertaining to water rights be brought in a county in which some part of the water right exists. *E. Clemens Horst Co. v. New Blue Point Mining Co.*, 177 Cal. 631, 171 P. 417 (1918). Lancaster unquestionably is a location in which a portion of the water rights exist and therefore is the proper forum in which to have this matter heard. The proposal to move the action to Santa Clara County will be disruptive and inconvenience

1 witnesses, the parties, their counsel, and thereby would frustrate and be at odds with forum non
2 conveniens doctrine. Many witnesses, for whom the forum non conveniens concept is primarily
3 concerned, will be located in Lancaster and will be inconvenienced and burdened by having to
4 travel to Santa Clara County to testify in this matter rather than testifying in Lancaster. *Wrin v.*
5 *Ohlandt* (1931) 213 C 158, 160, 1 P2d 991

6 The change of venue to Santa Clara County would serve only to inconvenience the
7 witnesses and frustrate the ends of justice. Code Civ. Proc. § 397(c). Thus this action should be
8 moved to the Lancaster Superior Court and have all aspects of the litigation conducted there.

9
10 **III.**

11 **THE COURT SHOULD NOT APPOINT DESIGNATED COUNSEL**
12 **FOR THE NON-PURVEYOR PARTIES.**

13 It has been suggested that the Court appoint Designated Counsel to facilitate
14 communication between the Court and the litigants. Designated Counsel generally fall into one
15 of three categories: Liaison Counsel, Lead Counsel, and Trial Counsel. (Manual for Complex
16 Litigation, Fourth, Federal Judicial Center (2004), §10.221). A.V. United Mutual Group objects
17 to the appointment of any form of Designated Counsel.

18 **A. Liaison Counsel is unnecessary.**

19 If Liaison Counsel is appointed by the Court, said counsel would be charged with
20 essentially administrative matters, such as communications between the court and other counsel
21 (including receiving and distributing notices, orders, motions, and briefs on behalf of the group),
22 convening meetings of counsel, advising parties of developments, and otherwise assisting in the
23 coordination of activities and positions. There currently exists no need for such a repository as
24 every document generated by all parties is posted on the Santa Clara County Superior Court's e-
25 filing website. All parties have internet access to all filed documents. There is no need for a
26 distribution conduit for such documents. Also, by the Court posting its orders online, the parties
27 are promptly advised of developments. Liaison Counsel is unnecessary.

1 **B. Lead Counsel should not be appointed.**

2 Lead Counsel is charged with formulating and presenting positions on substantive and
3 procedural issues during the litigation. (*Ibid*). Typically, they act for a group of parties such as
4 plaintiffs or defendants. The concept works well in class action cases in which the members of a
5 class have similar interests. Also, the concept could work for the purveyor parties as they appear
6 unified in their goals in this litigation. The concept, however, would not work for the non-
7 purveyor group which consists of overlying landowners, the small pumping class, the dormant
8 overlying landowner class and the mutual water companies, as well as the State of California and
9 the United States Government. Each of those entities has divergent interests from the others, and
10 it is unlikely that fewer than eight or nine different attorneys could act as lead counsel, because
11 there are at least that many separate interests in the non-purveyor group. Nominating that many
12 attorneys would defeat the purpose of lead counsel. The potential exists for conflict between the
13 interests of the various parties within that group. The same arguments can be made against
14 appointment of Lead Counsel in this case as were made when the purveyor parties nominated the
15 State of California to act as class representative for the class of dormant overlying landowners.
16 “The representative party must . . . have interests which are compatible with and not antagonistic
17 to those whom he would represent.” *Richmond v. Dart Industries, Inc.*, *supra* at 472, quoting
18 *Shulman v. Ritzenberg* (1969) 47 F.R.D. 202, 207. The Court should not appoint Lead Counsel
19 for the non-purveyor parties, as the interests of that group are not compatible.

20 **C. Trial Counsel should not be appointed.**

21 The same arguments set forth herein above can be made against the appointment of Trial
22 Counsel for the non-purveyor groups. As an example, the purveyor parties appear unified on the
23 issue of prescription, the non-purveyors have divergent goals, depending on each one’s status.
24 As an example, the State of California can claim prescription, but cannot be prescribed against.
25 Do prescription rights exist against the dormant landowners or the pumping overlying
26 landowners? If so, can counsel for the State of California adequately protect those rights?
27 Obviously not. Conversely, counsel for overlying landowners cannot adequately represent the
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1 interests of the State of California or the United States Government. Each entity should have its
2 own interests represented. Trial Counsel should not be appointed by the Court.

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IV.
CONCLUSION

A.V. United Mutual Group's position is that Phase II of the trial should solely on the issue of sub-basis v. basin, and that portion of the trial should be heard in Lancaster.

Serious issues arise concerning the due process rights of the non-purveyor parties, and the potential for conflicts of interest among the members of that group. A.V. United Mutual Group opposes the nomination of any Designated Counsel for the non-purveyor group of parties in this action.

Dated: August 5, 2008

COVINGTON & CROWE, LLP

By: 

ROBERT E. DOUGHERTY
WILLIAM A. HAUCK
JESSE T. MORRISON
Attorneys for Cross-Defendants and Cross-Complainants A.V. United Mutual Group

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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,
LLP, 1131 West Sixth Street, Suite 300, Ontario, California 91762.

6 On **August 6, 2008**, I served the foregoing document described as
7 **A.V. MUTUAL GROUP'S BRIEF SUBMITTED PURSUANT TO COURT ORDER OF
JULY 21, 2008** on the interested parties in this action:

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

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

12
13 **BY MAIL**

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

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

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

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

22 Executed on **August 6, 2008**, at Ontario, California.

23
24 
25 DOLORES C. CRUZ