

Civ. No. \_\_\_\_\_

**IN THE COURT OF APPEAL, STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO**

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**ANTELOPE VALLEY GROUND WATER AGREEMENT  
ASSOCIATION (AGWA); U.S. BORAX, INC.; BOLTHOUSE  
PROPERTIES, LLC; WM. BOLTHOUSE FARMS, INC.; CRYSTAL  
ORGANIC FARMS, A LIMITED LIABILITY COMPANY,  
GRIMMWAY ENTERPRISES, INC.; LAPIS LAND COMPANY,  
LLC.; A.V. UNIFIED MUTUAL GROUP; SHEEP CREEK WATER  
COMPANY; and SERVICE ROCK PRODUCTS CORPORATION,**

**Petitioners,**

**v.**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES,**

**Respondent.**

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**LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40,  
et. al.**

**Real Parties In Interest**

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**Appeal from the Judgment of the Superior Court  
State of California, County of Los Angeles  
The Honorable Jack Komar (Ret.)  
Telephone No.: (408) 882-2286  
Los Angeles County Superior Court Case No. JCCP 4408**

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**PETITION FOR WRIT OF MANDATE AND  
REQUEST FOR TEMPORARY STAY OF PROCEEDINGS  
REQUEST FOR IMMEDIATE STAY**

**\*\*\***

**EXHIBITS BOUND SEPARATELY**

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## **CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

**(Cal. Rule of Court 8.208)**

The undersigned, counsel for Petitioners, certify that Rio Tinto PLC has an ownership interest in Petitioner U.S. Borax Inc. that is subject to disclosure under the California Rules of Court. The undersigned, counsel for Petitioners, also certify that MCC Development Corporation has an ownership interest in Petitioner Service Rock Products Corporation that is subject to disclosure.

Counsel for Petitioners Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc., pursuant to California Rules of Court, Rule 8.208(d)(2), will file separately an application to file under seal a certificate of financial or other interest in accord with Rule 8.208(e)(1) and (2).

Otherwise, counsel for Petitioners know of no other entity or person other than the parties to this proceeding who has either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate (Cal. Rule of Court 8.208(e)(1)), or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves (Cal. Rule of Court 8.208(e)(2)).



Dated: November 6, 2009

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By: Bradley Herrema  
MICHAEL D. FIFE  
BRADLEY J. HERREMA  
Attorneys for Petitioners  
ANTELOPE VALLEY GROUND  
WATER AGREEMENT  
ASSOCIATION

**I. PETITION FOR WRIT OF MANDATE**

To the Honorable Manuel A. Ramirez, Presiding Justice of the Court of Appeal for the Fourth Appellate District, Division Two,<sup>1</sup> and to each of the Associate Justices of that Court, Petitioners, Antelope Valley Groundwater Agreement Association, Service Rock Products Corporation, Sheep Creek Water Company, the Antelope Valley United Mutual Group, U.S. Borax, Inc., Bolthouse Properties, Inc., Wm. Bolthouse Farms, Inc., Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC, comprising over 62 parties, respectfully request that this Court grant this Petition for Writ of Mandate (Code Civ. Proc., § 1085) for judicial disqualification of the Honorable Jack Komar in this matter pursuant to Code of Civil Procedure section 170.6.

**II. ISSUES PRESENTED**

Petitioners are forced to bring this petition for extraordinary relief based on the Honorable Jack Komar's failure to disqualify himself pursuant to Petitioners' timely 170.6 Peremptory Challenge. Petitioners' challenge was based on the established legal premise that the right of a party to exercise a section 170.6 peremptory challenge arises upon consolidation.

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<sup>1</sup> Pursuant to Code of Civil Procedure section 404.2 and Cal. Rules of Ct. Rule 3.505(a), the coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division Two as the reviewing court with appellate and writ jurisdiction. (Chair, Judicial Council of California, *Amended Order Assigning Coordination Trial Judge* (Aug. 31, 2005), at 2.)

(See, e.g. this Court of Appeal's decision in *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 154-55.) The record in these proceedings demonstrates that Petitioners' challenge was timely and in the proper form. First, Petitioners confirmed on the record that the Judge was granting consolidation of the cases before exercising their challenge:

MR. ZIMMER: Unless the Court is saying that the motion is granted today to consolidate, then my understanding is the Court is going to look at what's going to be submitted later and determine whether the Court is going to grant it. If the Court is granting it today then we need to know that.

THE COURT: Well, I think that the Court is granting it today, but the exact form of that order and what exactly is going to be consolidated is not clear to me at this point.

(Appx., Exh. 10 at 38:21 – 39:2.)<sup>2</sup> Second, the subsequent minute order from the Court reflected what had occurred on the record: “The Motion was heard and GRANTED. Counsel are ordered to meet and confer regarding the form of the Order to Consolidate.” The reason Petitioners are now compelled to seek extraordinary relief from this Court is that the Judge, after ruling that he was granting consolidation, and after issuing a minute order confirming the motion was granted, held a further hearing where he said that was not what he meant:

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<sup>2</sup> “Appx., Exh. \_\_\_ at \_\_\_” refers to the corresponding Exhibit # and the Exhibit page number in the Appendix filed in conjunction with this writ petition.

...what it was was a statement by the court that I intended to grant the motion to consolidate. The minute order that was prepared by the clerk reflects the clerk's rather cryptic conclusion as to what occurred in court. But the actual order has not yet been signed, it has not been prepared. So there, in fact, at this point, is no such order. That's kind of the problem with your – with the timing of your 170.6.

(Appx., Exh. 11 at 7:20-8:4.) On that basis, the Judge decided that the Peremptory Challenge was “premature” and ordered that it be stricken. In fact, there was nothing “cryptic” about what occurred—the Judge granted consolidation, issued a minute order confirming as much, and had requested that the parties meet to discuss issues regarding their alignment vis-à-vis each other. Only after being confronted by a timely 170.6 challenge did the Judge's “intent” surface that consolidation had somehow not been granted.

If the Court was not going to take any further action until the “form” of the consolidation order was resolved, then this might be much ado about nothing—however, that is not the case. Rather, the Judge proceeded to explain that he expects to hear proposed settlements between various parties to certain of the cases involved in these proceedings *before* issuing a final order on consolidation:

It frankly has never been my intention to sign the consolidation order until that hearing occurs when I have an opportunity to review the class action settlements.

(Appx., Exh. 11 at 11:16-19.) The prejudice presented by these circumstances, where the Judge has (1) revisited the events of a prior hearing and, on an untenable interpretation of what occurred, stricken the Peremptory Challenge as premature, and (2) now indicated that the Court will be hearing dispositive matters before “signing” the consolidation order, commends extraordinary writ relief.

For the reasons discussed herein, Petitioners respectfully urge this Court to grant this Petition, and to hold: (1) that Petitioners’ Peremptory Challenge was timely when filed upon Judge Komar’s ruling and minute order granting consolidation; and (2) that, on that basis, Judge Komar should disqualify himself and transfer the case for reassignment.

Petitioners further request an immediate temporary stay of all further proceedings in the consolidated actions, pending the Court of Appeals’ determination on this Petition.

### **III. GROUNDS FOR EXTRAORDINARY RELIEF**

Code of Civil Procedure section 170.3(d) declares that “the determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding.”

The petition for the writ must be filed and served within ten (10) days after service of written notice of entry of the court’s order determining the question of disqualification. (Code of Civ. Pro., § 170.3(d).) Accordingly,

a writ of mandate here is proper and the only form of relief available to Petitioners.

Pursuant to Code of Civil Procedure section 404.2 and Cal. Rules of Ct. Rule 3.505(a), the coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court with appellate and writ jurisdiction. (Appx., Exh. 1, attachment 2 at 2 (Chair, Judicial Council of California, *Amended Order Assigning Coordination Trial Judge* (Aug. 31, 2005) at 2).)

#### **IV. THE RECORD**

Petitioner has filed an Appendix of Exhibits with this Petition, which includes the pertinent pleadings in Respondent Court. The exhibits accompanying this petition are true and correct copies of original documents filed with respondent court and true and correct copies of minute orders and the reporter's transcript of hearings before the Honorable Jack Komar. Page references in this petition are to the individual page numbers of each exhibit.

#### **V. PETITION FOR WRIT OF MANDATE**

1. This petition arises due to the Honorable Jack Komar's failure to disqualify himself pursuant to Petitioners' timely Peremptory Challenge following consolidation of actions regarding the adjudication of the rights to water and storage space within the Antelope Valley Groundwater Basin ("Basin").

2. The underlying case in this Petition is a complex water rights adjudication of the Basin coordinated under Judicial Council Coordination Proceeding No. 4408, and entitled the "Antelope Valley Groundwater Cases." Originally, the cases coordinated as the Antelope Valley Groundwater Cases included: *Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.*, Superior Court of California County of Los Angeles, Case No. BC 325 201; *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; and *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 No. RIC 353 840, RIC 344 436, RIC 344 668.

3. These actions were coordinated by the Judicial Council on June 17, 2005. On July 11, 2005 the Judicial Council, acting through the Chief Justice, ordered those coordinated proceedings to be venued in the Los Angeles County Superior Court. (Appx., Exh. 1, attachments 1 and 2.)

4. On August 31, 2005 the Chief Justice of California assigned the Honorable Jack Komar as the coordination trial judge to hear all the coordinated actions in this case.

5. On October 10-12, 2006, the Court held a Phase I trial, the purpose of which was to determine the outermost geographical extent of the area to be adjudicated. On October 7-10 and November 3-5, 2008, the Court held a Phase II trial to determine whether there were subareas in the area of adjudication which should be treated differently from the rest of the area of adjudication. These two phases were strictly jurisdictional, conducted in order to establish which landowners and water users would be necessary parties to the lawsuit.

6. Following coordination and assignment, numerous other complaints and cross-complaints were filed, including two class actions: *Willis v. Los Angeles County Waterworks District No. 40*, LASC Case No. BC 364 553 (the "Willis Class Action"), originally filed on January 4, 2007, and *Wood v. Los Angeles County Waterworks District No. 40*, LASC Case No. BC 391 869 (the "Wood Class Action"), originally filed June 2, 2008. The defendants to each of the Willis and Wood Class Actions generally comprised various public water agencies within the Basin, but did not include any other private landowners, including Petitioners. Notices of both class actions were not provided to the class members until after the completion of the Phase I & II trials.

7. On July 15, 2009, a group of water purveyors filed the *Motion to Transfer and Consolidate for All Purposes*, requesting the transfer of all actions pending in the Riverside County and Kern County Superior Courts.



to the Los Angeles County Superior Court, and a consolidation of all of the transferred and coordinated cases. (Appx., Exh. 1.)

8. On October 13, 2009, the Court held a hearing to consider, among other things, the *Motion to Transfer and Consolidate for All Purposes*. At that hearing the Court granted the motion.

MR. ZIMMER: Unless the Court is saying that the motion is granted today to consolidate, then my understanding is the Court is going to look at what's going to be submitted later and determine whether the Court is going to grant it. If the Court is granting it today then we need to know that.

THE COURT: Well, I think that the Court is granting it today, but the exact form of that order and what exactly is going to be consolidated is not clear to me at this point.

(Appx., Exh. 10 at 38:21 – 39:2.)

9. At the October 13, 2009 hearing, the Court also discussed the intended effect of its granting the *Motion to Transfer and Consolidate for All Purposes*, not only for trial, but *for all purposes*:

THE COURT: But I think that ultimately what is necessary in this case, whatever the ultimate facts might be that you find that there be a judgment that affects every party to the litigation, a single judgment. How we go about achieving that without consolidation seems to me to be a puzzle that I don't fully understand and -- but at this point I think that it's in everybody's best interest that there be a single judgment.

(Appx., Exh. 10 at 19:9-17; see also Appx., Exh. 10 at 13:27-28-14:12; 16:2-11.)

10. Immediately upon Judge Komar's grant of the *Motion to Transfer and Consolidate for All Purposes*, Petitioners notified the Court that they were exercising their rights under 170.6 and that their right to do so was based upon the granting of the *Motion to Transfer and Consolidate for All Purposes*.

MR. SLOAN: Your Honor, . . . several of the parties have prepared a 170.6 challenge. We believe that upon consolidation that gives us the right to exercise the 170.6.

(Appx., Exh. 10 at 39:25-28.)

11. The Court then set a hearing date for Petitioner's Peremptory Challenge for October 27, 2009 and set a briefing schedule for oppositions and replies. (Appx., Exh. 10 at 41:11-15.)

12. The subsequent Minute Order for the hearing, posted to the Court's website on October 13, 2009, stated that:

The Motion [to Transfer and Consolidate for All Purposes] was heard and GRANTED. Counsel are ordered to meet and confer regarding the form of the Order to Consolidate.

(Appx., Exh. 12 at 2.)

13. On October 19, 2009, a group of water purveyors filed their *Opposition to Peremptory Challenge to Assigned Judge (CCP Sec. 170.6)*, which the City of Los Angeles joined. (Appx., Exh. 3, 4.) Also on October

19, 2009, Phelan Piñon Hills Community Services District filed its *Opposition to Peremptory Challenge (C.C.P. § 170.6)*, and the United States filed *Federal Defendants' Response to Peremptory Challenge to Assigned Judge (CCP 170.6)*. (Appx., Exh. 5, 6.) Los Angeles Waterworks District No. 40 and Rosamond Community Services District filed their *Joinder in Opposition to Peremptory Challenge to Assigned Judge October 20, 2009*. (Appx., Exh. 7.)

14. Petitioners filed their *Cross-Defendants' Reply to Oppositions to Peremptory Challenge to Assigned Judge* on October 22, 2009. (Appx., Exh. 8.)

15. Between Petitioner's October 13, 2009 filing of the 170.6 challenge and the October 27, 2009 hearing on the Peremptory Challenge, Judge Komar issued five (5) further minute orders on the case unrelated to Petitioners' Peremptory Challenge: Minute Order from October 15, 2009 (Appx., Exh. 13); Minute Order from October 16, 2009 (Appx., Exh. 14); Minute Order from October 22, 2009 (Appx., Exh. 15); Minute Order from October 23, 2009 (Appx., Exh. 16); Minute Order from October 23, 2009 (2nd). (Appx., Exh. 17.)

16. Respondent Court held the hearing on Petitioners' Peremptory Challenge on October 27, 2009 and issued a written order to "strike" the Peremptory Challenge on October 28, 2009. (Appx., Exh. 11; Appx., Exh. 21 at 2.) Despite having orally granted *Motion to Transfer and*

*Consolidate for All Purposes*, and confirming that ruling with an unambiguous written minute order, and despite having ordered a briefing schedule for the peremptory challenge which was based on the Order of Consolidation, at the October 27, 2009 hearing Judge Komar announced that he had not actually granted the *Motion to Transfer and Consolidate for All Purposes* and that the Peremptory Challenge was therefore “premature.” (Appx., Exh. 11 at 6:22-23, 8:11-14, 10:10-12.)

17. Both verbally and in the Court’s written order of October 28, 2009, the Court “clarified” that it “intended” to grant the *Motion to Transfer and Consolidate for All Purposes*, but that it had not done so and thus, that the Court believed the Peremptory Challenge was untimely filed. (Appx., Exh. 11 at 6:22-23, 8:11-14, 10:10-12; Appx., Exh. 21 at 2.) The Court also announced that it now intended to issue other rulings prior to “finalizing” its order on the consolidation. (Appx., Exh. 11 at 20:5-10.)

18. This is precisely the situation that the Code of Civil Procedure section 170.6 procedures are designed to avoid. Rather than directly ruling on Petitioners’ Peremptory Challenge, the Court reframed its prior ruling in order to sidestep the Peremptory Challenge and allow the Court to continue issuing rulings on other matters. Petitioners are left with no alternative but to treat the Court’s action as a denial of the Peremptory Challenge and file this Petition. The subsequent actions of the Court justify, and in fact demand, that the case be stayed pending this Court’s

decision.

19. Code of Civil Procedure Section 170.6 guarantees a litigant an extraordinary right to disqualify a judge. This right has been held to be a “substantial right” and is an “important part of California’s system of due process that promotes fair and impartial trials and confidence in the judiciary.” (*Stephens v. Superior Court* (2002) 96 Cal.App.4th 54, 61-62 (citations omitted).)

20. Upon consolidation, Petitioners have the right to exercise a Peremptory Challenge under Code of Civil Procedure section 170.6. A party to any of the consolidated cases may disqualify the assigned judge by a timely challenge under Code of Civil Procedure section 170.6, even where that party previously acquiesced to the judge in one of the consolidated cases. (*Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 155.) A party to any consolidated case may exercise its right to challenge the assigned judge under Code of Civil Procedure section 170.6, notwithstanding that the party previously acquiesced to the judge’s assignment in one of the consolidated cases. (*Id.*; *Philip Morris Inc. v. Superior Court* (1999) 71 Cal.App.4th 116, 123.)

21. The ability of a party to exercise a peremptory challenge upon the consolidation of cases is based on a recognition that consolidation alters the nature of the actions, essentially creating a new case. Consolidation of the diverse actions involved in Judicial Council Coordination Proceeding

4408, especially though not exclusively with reference to the two class actions, changes the alignment of the parties so fundamentally that the cases cannot be considered continuous. As described above, the Court granted consolidation *for all purposes*, meaning that there would be a single judgment as to all parties, and that the parties became parties to cases – such as the Willis and Wood Class Actions – to which they were not previously parties.

22. A party may exercise a peremptory challenge as to the assignment of consolidated cases to a judge that had previously been assigned to one of the cases consolidated. (*Farmers Insurance Exchange v. Superior Court of Contra Costa County* (1992) 10 Cal.App.4th 1509.) Even if the judge has previously ruled on contested matters in consolidated cases, a peremptory challenge is timely and proper. (*Farmers*, 10 Cal.App.4th at 1511.)

23. Once it is properly exercised, a party's peremptory challenge terminates the judge's authority to act in any manner in the case, other than to transfer the case to another judge. (*In re Jenkins* (2d Dist. 1999) 70 Cal.App.4th 1162.) The challenged trial court judge has jurisdiction solely to "inquire into the timeliness of the affidavit or its technical sufficiency under the statute." (*Andrews v. Joint Clerks, etc., Committee* (1966) 239 Cal.App.2d 285, 293-99 (Upholding court's power to inquire as to timeliness); *Lewis v. Linn* (1962) 209 Cal.App.2d 394, 399-400 (Upholding

court's power to inquire into technical sufficiency).) Review of Petitioners' Peremptory Challenge is thus limited to its timeliness and technical sufficiency. If a peremptory challenge is timely and in proper form, immediate disqualification is mandatory. (*Grant v. Superior Court* (6th Dist. 2001) 90 Cal.App.4th 518; *Barrett v. Superior Court* (3d Dist. 1999) 77 Cal.App.4th 1.) As long as the Peremptory Challenge is timely filed, the judge has no discretion to reject it, inquire about the party's motives, or require a showing of prejudice. (*Id.*; see also *Davcon, Inc. v. Roberts & Morgan* (2003) 110 Cal.App.4th 1355, 1359-60; *Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1251-53.)

24. Petitioners' Peremptory Challenge was timely and in proper form, and thus Petitioners have a clear right to disqualify Judge Komar. A Peremptory Challenge is timely if made "...within 10 days after notice of the all purpose assignment," and applies upon consolidation. (Code of Civil Procedure, § 170.6(a)(2); *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 154-55.) In this case, Petitioners immediately filed their Peremptory Challenge after Judge Komar's Order of Consolidation. It is thus timely. The substantial form of the Peremptory Challenge is set forth at Code of Civil Procedure Section 170.6(a)(5), which Petitioners followed. The technical sufficiency of Petitioner's Peremptory Challenge has not been questioned by Respondent Court or opposing parties.

25. Code of Civil Procedure section 269(a) recognizes that a “ruling” made by the judge in court is a formal ruling, because the courtroom reporter is required to record it as such. Because of Respondent Court’s order granting the Public Water Suppliers’ *Motion to Consolidate and Transfer for All Purposes* and the subsequent affirmation of that order by the Clerk issuing the October 13, 2009 Minute Order, the case was consolidated.

26. Pursuant to Code of Civil Procedure section 170.3(d) and for the reasons set forth above, Petitioner has no other adequate and speedy remedy at law, and this Petition for Writ of Mandate is an appropriate remedy.

#### **VI. GROUNDS FOR AN IMMEDIATE STAY**

A stay of further proceedings in Respondent Court is necessary to preserve the status quo and thereby provide this Court with sufficient time to consider this petition. As demonstrated above, since the time that the Peremptory Challenge was filed, the Court has continued to issue orders unrelated to the Peremptory Challenge and has attempted to side step the Code of Civil Procedure section 170.6 process by attempting to rescind his order of consolidation after losing jurisdiction to do so. The Court’s October 28, 2009 Order evidences a clear intent to continue ruling on dispositive issues in the case without regard for the Code of Civil Procedure section 170.6 process. This Court should preserve the status quo by



ordering a stay of further proceedings in Respondent Court pending the final resolution of this petition concerning disqualification of Judge Komar.

**VII. PRAYER**

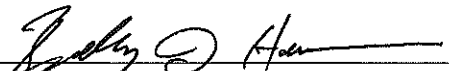
WHEREFORE, Petitioner respectfully prays as follows:

1. The Court, under its seal, issue an alternative writ of mandate directing Respondent Court to set aside and vacate its order denying Petitioners' Peremptory Challenge under Code of Civil Procedure section 170.6 (or to show cause why it should not be ordered to do so), and upon return of the alternative writ, issue a peremptory writ of mandate or such other extraordinary relief as is warranted, directing Respondent Court to set aside and vacate its order denying Petitioners' Peremptory Challenge, and directing Judge Komar to immediately disqualify himself from the consolidation of Judicial Council Coordination Proceeding No. 4408 and transfer the case for reassignment to another judge.
2. This Court order and/or permit further briefing as necessary, to allow for a full resolution of these issues;
3. This Court grant a temporary stay of the proceedings in this case, such stay to remain in force until the outcome of this petition is finalized or Judge Komar concedes that he has no further jurisdiction to hear proceedings in the consolidated cases and removes himself; and
4. This Court grant such other relief as may be just and proper.

Respectfully submitted,

Dated: November 4, 2009

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By:   
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for Petitioners  
ANTELOPE VALLEY GROUND  
WATER AGREEMENT  
ASSOCIATION

**VERIFICATION**

State of California, County of Santa Barbara:

I, the undersigned, being sworn, say:

I declare under penalty of perjury under the laws of the State of California that I am the attorney for Antelope Valley Groundwater Agreement Association, petitioners in this action.

I have read the foregoing Petition for Writ of Mandate and Request for Temporary Stay of Proceedings and know the contents thereof. All facts alleged in the petition are true of my own personal knowledge.


DATED: November 4, 2009

By:   
BRADLEY J. HERREMA

DATED: November 4, 2009

Respectfully submitted,

**CLIFFORD & BROWN**

By:   
\_\_\_\_\_  
RICHARD G. ZIMMER  
T. MARK SMITH  
Attorneys for BOLTHOUSE PROPERTIES  
LLC and WM. BOLTHOUSE FARMS, INC.

**VERIFICATION**


State of California, County of Kern :

I, the undersigned, being sworn, say:

I declare under penalty of perjury under the laws of the State of California that I am the attorney for Bolthouse Properties LLC and Wm. Bolthouse Farms, Inc., petitioners in this action.

I have read the foregoing Petition for Writ of Mandate and Request for Temporary Stay of Proceedings and know the contents thereof. All facts alleged in the petition are true of my own personal knowledge.


DATED: November 4, 2009

By:   
\_\_\_\_\_  
T. MARK SMITH

DATED: November 3, 2009

Respectfully submitted,

**LAW OFFICES OF LEBEAU THELEN, LLP**

By:   
BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN  
Attorneys for DIAMOND FARMING  
COMPANY, CRYSTAL ORGANIC FARMS,  
GRIMMWAY ENTERPRISES, INC., and  
LAPIS LAND COMPANY, LLC.

**VERIFICATION**


State of California, County of Kern :

I, the undersigned, being sworn, say:

I declare under penalty of perjury under the laws of the State of California that I am the attorney for Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC, petitioners in this action.

I have read the foregoing Petition for Writ of Mandate and Request for Temporary Stay of Proceedings and know the contents thereof. All facts alleged in the petition are true of my own personal knowledge.


DATED: November 3, 2009

By:   
BOB H. JOYCE

DATED: November 3, 2009

Respectfully submitted,

**GRESHAM SAVAGE NOLAN & TILDEN, APC**

By:   
MICHAEL DUANE DAVIS  
MARLENE ALLEN-HAMMARLUND  
BEN A. EILENBERG  
Attorneys for AV UNITED MUTUAL GROUP,  
SHEEP CREEK WATER COMPANY, INC.,  
and SERVICE ROCK PRODUCTS  
CORPORATION

**VERIFICATION**

State of California, County of San Bernardino:

I, the undersigned, being sworn, say:

I declare under penalty of perjury under the laws of the State of California that I am the attorney for AV United Mutual Group, Sheep Creek Water Company, Inc., and Service Rock Products Corporation, petitioners in this action.

I have read the foregoing Petition for Writ of Mandate and Request for Temporary Stay of Proceedings and know the contents thereof. All facts alleged in the petition are true of my own personal knowledge.

DATED: November 3, 2009

By:   
MICHAEL DUANE DAVIS

DATED: November 5, 2009

Respectfully submitted,

**MORRISON & FOERSTER LLP**

By: William M. Sloan  
EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
GEOFFREY R. PITTMAN  
Attorneys for U.S. BORAX, INC.

**VERIFICATION**

State of California, County of San Francisco:

I, the undersigned, being sworn, say:

I declare under penalty of perjury under the laws of the State of California that I am the attorney for U.S. Borax, Inc., petitioners in this action.

I have read the foregoing Petition for Writ of Mandate and Request for Temporary Stay of Proceedings and know the contents thereof. All facts alleged in the petition are true of my own personal knowledge.

DATED: November 5, 2009

By: William M. Sloan  
WILLIAM M. SLOAN

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

Petitioner respectfully submits these points and authorities in support of the Petition for Writ of Mandate:

**I. INTRODUCTION**

This Petition seeks to enforce Petitioners' right to disqualify a judge under Code of Civil Procedure section 170.6 ("Peremptory Challenge") following consolidation of separate cases. The determinative law in this case is *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150 (*Nissan*). The *Nissan* court held that where separate cases are consolidated, the parties in each of the consolidated cases retain the right to timely challenge the assigned judge.

The only question at issue in the present case is whether *Nissan* applies to the consolidation of previously coordinated cases. Petitioners argue that it does. Notwithstanding their coordination, the cases involved here are significantly different from one another, both in terms of the nature of the issues and the parties involved, and in the relative development of the cases, including the nature and extent of pretrial rulings. Consolidation of these previously coordinated cases will change the alignment of the parties and result in a significantly different case than previously existed.

When Respondent Court consolidated the separate cases involved here, a right to exercise a section 170.6 or peremptory challenge arose for

Petitioners. Because Petitioners filed their Peremptory Challenge immediately upon the Court's Order of Consolidation and in conformity with the form set forth in section 170.6(a)(5), Petitioners' Peremptory Challenge was timely and proper.

**II. THIS PETITION PRESENTS QUESTIONS OF LAW WHICH THIS COURT REVIEWS DE NOVO**

Appellate Courts review a decision granting or denying a Peremptory Challenge to a judge as an error of law reviewable under the non-deferential de novo standard. (*Ziesmer v. Superior Court* (2d Dist. 2003) 107 Cal. App. 4th 360, 363, as modified on denial of reh'g, (Apr. 22, 2003).) In the absence of conflicting evidence, the reviewing court must make an independent determination of the issue. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.) There are no conflicting facts in the instant action, as there is no dispute that Petitioners filed their Peremptory Challenge immediately upon Judge Komar's oral Order of Consolidation. The question of disqualification of Judge Komar is thus purely a matter of law to be reviewed de novo. (*Ziesmer*, 107 Cal.App.4th at 363.)



**III. RESPONDENT COURT WAS ONLY AUTHORIZED TO  
EVALUATE THE TIMELINESS AND TECHNICAL  
SUFFICIENCY OF THE PEREMPTORY CHALLENGE**

Respondent Court's review of Petitioners' Peremptory Challenge was limited to the timeliness and technical sufficiency of the challenge. If a Peremptory Challenge is timely and in proper form, immediate disqualification is mandatory. (*Grant v. Superior Court* (6th Dist. 2001) 90 Cal. App. 4th 518, 523-24; *Barrett v. Superior Court* (3d Dist. 1999) 77 Cal. App. 4th 1, 4-5.)

Once it is properly exercised, a party's Peremptory Challenge terminates all of the judge's authority to act in any manner in the case, other than to transfer the case to another judge. (*In re Jenkins* (2d Dist. 1999) 70 Cal. App. 4th 1162, 1165-66). The challenged trial court judge has jurisdiction solely to "inquire into the timeliness of the affidavit or its technical sufficiency under the statute." (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 531-32 (citing to *Andrews v. Joint Clerks, etc., Committee* (1966) 239 Cal.App.2d 285, 293-299 (upholding court's power to inquire as to timeliness), and *Lewis v. Linn* (1962) 209 Cal.App.2d 394, 399-400 (upholding court's power to inquire into technical sufficiency of the affidavit), overruled on another point in *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 799, fn. 18.)

Therefore, at the October 27, 2009 hearing on the Peremptory Challenge, (Appx., Exh. 11), Judge Komar only had jurisdiction to determine whether Petitioners timely filed their Peremptory Challenge upon consolidation, and whether it was in proper form. The Court lacked jurisdiction to reconsider granting the *Motion to Transfer and Consolidate for All Purposes*.

**IV. PETITIONER'S PEREMPTORY CHALLENGE WAS  
TIMELY AND IN PROPER FORM**

**A. Petitioners' Peremptory Challenge was Timely and  
Technically Sufficient**

A Peremptory Challenge is timely if made "... within 10 days after notice of the all purpose assignment," and applies upon consolidation. (Code of Civil Procedure, section 170.6(a)(2); *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal. App. 4th 150, 154-55.) The substantial form of the Peremptory Challenge is set forth at Code of Civil Procedure, section 170.6(a)(5). In this case, immediately after the Court's issuance of its Order of Consolidation, Petitioners filed their Peremptory Challenge (Appx., Exh. 10 at 39:25-40:28), which contained their good-faith assertion that Judge Komar is prejudiced against Petitioners, or the interests of Petitioners, such that in the newly consolidated action Petitioners cannot have a fair or impartial trial or hearing before him. (Appx., Exh. 2 at 1:26-28.) "Immediate" is certainly within such period and the Peremptory

Challenge is fully in compliance with the substantial form set forth in Code of Civil Procedure section 170.6(a)(5).

**B. Consolidation Provides a New Right to a Peremptory Challenge**

A party to any consolidated case may exercise its right to a Peremptory Challenge of the assigned judge under Code of Civil Procedure section 170.6, notwithstanding that the party previously acquiesced to the judge's assignment in one of the consolidated cases. (CAL. CIV. CTRM. HBOOK. & DESKTOP REF. § 14:50 (2009 ed.), citing *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal. App. 4th 150, 155; *Philip Morris Inc. v. Superior Court* (1999) 71 Cal. App. 4th 116, 123.) The *Nissan* court held where separate cases are consolidated, the parties in each of the consolidated cases retain their rights to timely challenge the assigned judge upon consolidation.

A party's acquiescence of a judge to hear one action does not impair his or her right to exercise a challenge to prevent that judge from hearing another matter, even if that matter raises issues closely related to those in the first action." (*Id.* at 155 [citations omitted].)

Here, just as the defendant did in *Nissan*, Petitioners properly moved to disqualify Respondent Court pursuant to section 170.6, by timely filing their Peremptory Challenge immediately following the Court's Order of Consolidation. (Appx., Exh. 10 at 39:25-40:28.) In *Nissan*, the party

exercising the peremptory challenge was a party to all three consolidated cases and had therefore previously been afforded an opportunity to exercise a peremptory challenge to any of the judges in any of the three cases. In the Antelope Valley Groundwater cases here, Petitioners were never parties to the two class action cases and thus never had the opportunity to exercise a peremptory challenge in those cases.

The *Nissan* court explained that Code of Civil Procedure section 170.6 must be construed to mean that in two successive actions, a party may move to disqualify in each, or may disqualify in the later action without waiving that right by failing to so move in the earlier action. (*Nissan*, 6 Cal.App.4th at 154-155.) Similarly here, Petitioners were parties to separate actions before Judge Komar, when consolidation created a later action, as to which Petitioners immediately exercised their rights to a Peremptory Challenge. This challenge was properly and timely filed under the rule set forth in *Nissan*.

That Petitioners had not challenged Judge Komar's assignment in any prior action does not render the Peremptory Challenge untimely or otherwise improper for purposes of the newly consolidated cases. Consolidation provides a second chance at exercising the statutory right to challenge a judge by alleging bias. (WEIL & BROWN, CIVIL PROCEDURE BEFORE TRIAL, § 12:369 (2009) (citing to *Nissan*)). Furthermore, as stated in *Nissan*, Code of Civil Procedure section 170.6

“should be liberally construed with a view to effect its objects and to promote justice.” (*Nissan*, 6 Cal.App.4th at 154, quoting *Eagle Maintenance & Supply Co. v. Superior Court* (1961) 196 Cal.App.2d 692, 695.) Petitioners should not be deprived of their guaranteed right to exercise a Peremptory Challenge in the consolidated cases. “Assigning the same judge to hear a series of complex actions, such as these where there exists subject matter overlap, may promote judicial efficiency. However, judicial efficiency is not to be fostered at the expense of a litigant’s rights under section 170.6 to peremptorily challenge a judge.” (*Nissan*, 6 Cal.App.4th at 155.)

This principle is not limited to the Fourth Appellate District. In *Farmers Insurance Exchange v. Superior Court of Contra Costa County* (1992) 10 Cal.App.4th 1509, three civil actions were consolidated and then another action pending in another county was coordinated with them. The defendant filed a timely Peremptory Challenge to the coordination judge, who had already ruled on contested matters in the three consolidated cases. The court held that the challenge was not untimely, even though the judge had previously ruled on contested matters in the consolidated cases, based on Rule 1515 (now Rule 3.516). Similar to the case in *Nissan* and the case at bar, the party filing the Peremptory Challenge was the common party to all the cases that were consolidated, including the one over which the judge assigned to the consolidated cases had already been presiding.

The *Farmers* Court noted that the opposing parties:

argue that Farmers' challenge was untimely because of Judge O'Malley's prior rulings on contested motions, including a motion for summary adjudication (section 437c) and a motion for class certification. They accuse Farmers of judge shopping because it challenged the very judge who previously made rulings adverse to its interests on issues common to others of the coordinated cases. They emphasize that even though the coordinated actions involve different plaintiffs, all of them are members of the same class and the relief sought is virtually identical.

(*Farmers*, 10 Cal.App.4th at 1511.) The *Farmers* Court rejected all of these arguments and found the Peremptory Challenge to be timely and proper. (*Farmers*, 10 Cal.App.4th at 1512.)

C. **Nissan Applies Even Where Consolidated Cases Were Previously Coordinated**

The fact that the consolidated cases have previously been coordinated does not alter Petitioners' right to exercise the Peremptory Challenge upon consolidation. Upon consolidation, a party may find itself a party to an entirely different action vis-à-vis new parties, which fundamentally changes the nature of the litigation in which it is involved. Under *Nissan*, the act of consolidation provides a new instance in which the parties to the consolidated actions may exercise their right to a Peremptory Challenge, regardless of whether the cases were previously coordinated. The Court's decision in *Nissan* was based on the consolidation's creation of

a newly configured case – precisely the situation here. The current consolidated action represents a new action, separate from the previously coordinated cases.

Consolidation is not merely an extension of prior coordination; the differences between coordination and consolidation are fundamental. Coordinated actions will result in separate judgments, which lend themselves to separate enforcement. Consolidation unifies the actions, such that a single judgment can be issued – as the Court intended here. If consolidation does not alter the nature of the case and realign the parties, then the purpose of the consolidation is unclear.

Here, as a result of consolidation, Petitioners are now parties to the Willis and Wood Class Actions, and are subject to the separate causes of action asserted therein, as well as to the unique defenses that the Classes possess. In addition, as classes, these new parties have a unique relationship to the Court which has not hitherto existed with respect to any of the parties in the cases that Petitioners were party to. The complex set of procedural issues that Petitioners are now subject to is, in fact, unprecedented. As stated by one of the class counsel at the hearing where consolidation was ordered: “If there was a case out there in which class action was consolidated into another civil litigation I was not able to find it.” (Appx., Exh. 10 at 17:13-15.)

Noting that the issue was also one of first impression at the time, the *Nissan* Court addressed a case cited by the lower court which denied add-on parties peremptory challenges in a coordination action. In a footnote, the *Nissan* Court distinguished *Industrial Indemnity Co. v. Superior Court* (1989) 214 Cal.App.3d 259, which held that the Judicial Council rules governing coordination proceedings do not provide for parties to an add-on petition to file a peremptory challenge to the coordination judge. (*Industrial Indemnity Co.*, 214 Cal.App.3d at 264-65.) The *Nissan* Court found this case inapplicable to peremptory challenges in the context of consolidation, and explained that consolidation fundamentally changes the nature of the action, affording a new right to peremptory challenge.

the statute must be construed to mean that in two successive actions a party may move to disqualify in each, or may disqualify in the later action without waiving that right by failing to so move in the earlier action.

(*Nissan*, 6 Cal.App.4th at 155, quoting *City of Hanford v. Superior Court* (1989) 208 Cal.App.3d 580, 593.)

**D. The Consolidated Case and the Previous Case are Not Continuous**

The ability of a party to exercise a section 170.6 peremptory challenge upon the consolidation of cases is based on a recognition that consolidation fundamentally alters the nature of the actions, essentially creating a new case. Consolidation of the diverse actions involved in



Judicial Council Coordination Proceeding 4408, especially though not exclusively with reference to the two class actions, changes the alignment of the parties so fundamentally that the cases cannot be considered continuous.

A specific example of the way in which consolidation will fundamentally change the nature of this case can be seen in the sequence of class certification and the Phase I and II trials. As a matter of due process, neither the Willis Class members nor the Wood Class members can be bound by the Court's rulings in Phases I and II, as notices of the class proceedings had not yet been disseminated. (Appx., Exh. 9 at 2:1-3, 2:26-3:7.) The law is clear that prior to class notice, class members cannot be bound by a determination on the merits; the defendants only gain the res judicata benefits of class certification after notice has been disseminated. (*Civil Service Employees Ins. Co. v. Superior Court* (1978) 22 Cal.3d 362, 372-74.) In effect, the Classes have a right of "automatic reversal" as to any of Respondent Court's future rulings that are predicated on Respondent Court's findings in Phases I and II of the trial, which took place prior to the dissemination of class notice. This gives the classes an enormous procedural leverage point that is not enjoyed by anyone who is a party to the other actions consolidated with the class actions. This will make Petitioners, as well as the rest of the parties and the Respondent Court, beholden to the classes unless the parties are willing to take the risk that the

many years of litigation will be rendered moot and returned to the beginning.

Another example of the alteration of the nature of the actions is to be found in the very process of consolidation itself. Respondent Court has set a hearing to consider the conditions of consolidation and a hearing to consider a settlement between the Classes and the Public Water Supplier parties on the very same day, February 5, 2010. (Appx., Exh. 10 at. 42:21-23.) Thus, in the newly consolidated case, Petitioners will be faced with a vast number of landowners who have just settled with the Public Water Supplier parties at the prompting of Respondent Court.<sup>3</sup> This will place these other landowners in a procedural and substantively different position than all the other landowners currently on the “landowner side” of the case. It may even result in an adverse relationship between these landowners and the landowner side of the case. This circumstance did not exist prior to consolidation.

The *Nissan* Court touched briefly on the differences in the cases to be consolidated for the purpose of dismissing the characterization of the two cases to be consolidated as “continuations” of the third case. That Court briefly listed some of the distinguishing factors in the *Nissan* cases,

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<sup>3</sup> In fact, Respondent Court went so far as to prompt the Public Water Suppliers to drop their claim of prescription (the fundamental legal claim in the adjudication) against at least the Wood Class. (Appx., Exh. 22 at 15:13-24.)

but only as a contrast to the fact that all the cases involved the same defendant (Nissan), the same model of car (300ZX) and the same underlying defect (sudden acceleration). (*Nissan*, 6 Cal.App.4th at 153, 155.) The *Nissan* Court felt compelled to identify differences in the cases because the cases to be consolidated were otherwise nearly identical.<sup>4</sup>

Similarly here, the Willis and Wood Class Actions to be consolidated into the main action cannot be considered “continuations” of the main action. By virtue of the structure of the cases as plaintiff class actions and the timing of creation of the classes, the relationship between plaintiffs and defendants is significantly different than the relationship between plaintiffs and defendants in the main action, both substantively and procedurally. Following approval of the settlement in the class actions, these differences will be even more significant.

**E. Petitioners will be Prejudiced by the Court’s Determinations Prior to its “Finalization” of its Order of Consolidation**

If Petitioners are incorrect and their Peremptory Challenge was premature, Petitioners will be prejudiced by the Court’s determinations prior to its “finalization” of its order of consolidation. The Court has already set a February 5, 2010 hearing in order to have a hearing on the

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<sup>4</sup> Of course, the similarities in the cases are the reason they were consolidated in the first place. Without sufficient commonality, they could not be consolidated.

proposed Class settlements and to consider other issues determinative of the future of the case. Petitioners filed their Peremptory Challenge in good faith upon an unambiguous action of the Court to consolidate the cases at issue.<sup>5</sup> The Court has now attempted to retreat from this ruling for the specific purpose of issuing further orders in the case before Petitioner's rights under Code of Civil Procedure section 170.6 can be exercised. This attempt to side step the statutory procedures at Code of Civil Procedure section 170.6 is itself sufficient grounds to assume that Petitioner's will be prejudiced by rulings made by the Court prior to the "finalization" of consolidation.

**V. A STAY IS NECESSARY TO PRESERVE THE STATUS QUO  
AND PREVENT IRREPARABLE PREJUDICE AND HARM  
TO PETITIONERS**

A stay of further proceedings in Respondent Court is necessary to preserve the status quo and thereby provide this Court with sufficient time

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<sup>5</sup> Even if the Court should disagree with Petitioners and find that the Peremptory Challenge was "premature," Respondent Court has already indicated that it disagrees with the merits of Petitioners' arguments in favor of the right to exercise a section 170.6 peremptory challenge upon consolidation. At the October 27, 2009 hearing, Respondent Court stated, "I happen to disagree with your interpretation of the law with regard to coordinated matters, but we will take that up at an appropriate time should you decide that is what you wish to do." (Appx., Exh. 11 at 8:6-10.) Since Respondent Court has already intimated how it would rule on a section 170.6 challenge he considered timely, it is appropriate for this Court to address the applicability of *Nissan* in the case of consolidation of coordinated cases to avoid having to make such a determination in the future.

to consider this Petition. As described above, Petitioners timely filed their Peremptory Challenge to Judge Komar, and thus he should be disqualified and the case should be transferred to another judge. Respondent Court continues to issue orders from the bench and does not appear to consider himself bound by Petitioners' Peremptory Challenge. Accordingly, this Court should preserve the status quo by ordering a stay of further proceedings in Respondent Court pending the final resolution of this petition.

## **VI. CONCLUSION**

Respondent Court's issuance of its October 13, 2009 order to transfer and consolidate gave Petitioners a clear right to file a Peremptory Challenge against Respondent Court under Code of Civil Procedure section 170.6. That guaranteed right, sounding in principles of due process, exists regardless of whether Petitioners had previously acquiesced to Judge Komar in any of the previously coordinated cases. The controlling case law and related authorities-*Nissan*, *Philip Morris*, *Farmers* and other authority, such as the California Civil Courtroom Handbook and Desktop Reference at § 14:50 (2009 ed.) – clearly establish the right of Petitioners to file the Peremptory Challenge upon the Court's issuance of the Order of Consolidation.

The only questions before Respondent Court were the timeliness and the form of the Peremptory Challenge. Petitioners' immediate filing of the


Peremptory Challenge was certainly timely, and Petitioners clearly met the statutory requirements under Code of Civil Procedure section 170.6.

Pursuant to Code of Civil Procedure section 170.3(d), Petitioners have no other adequate remedy at law to review Respondent Court's denial of their timely and technically sufficient Peremptory Challenge other than this requested writ of mandate.

Based upon the foregoing, the Peremptory Challenge was timely and proper; the consolidated case must be assigned to another judge. Therefore, Respondent Court's October 27, 2009 denial of Petitioner's Peremptory Challenge was erroneous as a matter of law. Petitioner respectfully requests that mandate issue.

Respectfully submitted,

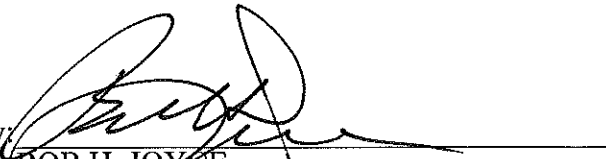
Dated: November 6, 2009 BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By:   
MICHAEL T. EIFE  
BRADLEY J. HERREMA  
Attorneys for Petitioners  
ANTELOPE VALLEY GROUND  
WATER AGREEMENT ASSOCIATION

DATED: November 3, 2009

Respectfully submitted,

**LAW OFFICES OF LEBEAU THELEN, LLP**

By:   
BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN  
Attorneys for DIAMOND FARMING  
COMPANY, CRYSTAL ORGANIC FARMS,  
GRIMMWAY ENTERPRISES, INC., and  
LAPIS LAND COMPANY, LLC.

DATED: November \_\_, 2009

Respectfully submitted,

**GRESHAM SAVAGE NOLAN & TILDEN**

By: \_\_\_\_\_  
MICHAEL DUANE DAVIS  
MARLENE ALLEN-HAMMARLUND  
BEN A. EILENBERG  
Attorneys for AV UNITED MUTUAL GROUP,  
SHEEP CREEK WATER COMPANY, INC.,  
and SERVICE ROCK PRODUCTS  
CORPORATION

DATED: November \_\_\_, 2009

Respectfully submitted,


**LAW OFFICES OF LEBEAU THELEN, LLP**

By: \_\_\_\_\_  
BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN  
Attorneys for DIAMOND FARMING  
COMPANY, CRYSTAL ORGANIC FARMS,  
GRIMMWAY ENTERPRISES, INC., and  
LAPIS LAND COMPANY, LLC.

DATED: November 3, 2009

Respectfully submitted,

**GRESHAM SAVAGE NOLAN & TILDEN, APC**

By:  \_\_\_\_\_  
MICHAEL DUANE DAVIS  
MARLENE ALLEN-HAMMARLUND  
BEN A. EILENBERG  
Attorneys for AV UNITED MUTUAL GROUP,  
SHEEP CREEK WATER COMPANY, INC.,  
and SERVICE ROCK PRODUCTS  
CORPORATION



DATED: November 5, 2009

Respectfully submitted,

**MORRISON & FOERSTER LLP**

By: William M Sloan  
EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
GEOFFREY R. PITTMAN  
Attorneys for U.S. BORAX, INC.

DATED: November 4, 2009

Respectfully submitted,

**CLIFFORD & BROWN**

By: T. Mark Smith  
RICHARD G. ZIMMER  
T. MARK SMITH  
Attorneys for BOLTHOUSE PROPERTIES  
LLC and WM. BOLTHOUSE FARMS, INC.

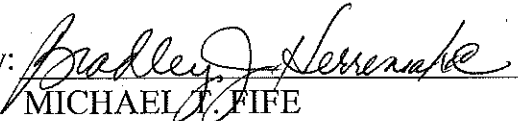
**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, Rule 14(c)(2))**

The text of this PETITION FOR WRIT OF MANDATE AND REQUEST FOR TEMPORARY STAY OF PROCEEDINGS consists of 7,578 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: November 4, 2009

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By:   
MICHAEL J. FIFE  
BRADLEY J. HERREMA  
Attorneys for Petitioners  
ANTELOPE VALLEY GROUND  
WATER AGREEMENT ASSOCIATION

**PROOF OF SERVICE BY PERSONAL DELIVERY**

I am over the age of eighteen years and not a party to this action. My business address is 2029 Century Park East, Suite 2100, Los Angeles, California 90067. On November 6, 2009, I caused to be served via attorney service, First Legal Support the:

**PETITION FOR WRIT OF MANDATE  
AND REQUEST FOR IMMEDIATE STAY  
OF PROCEEDINGS**

by delivering copies thereof to:

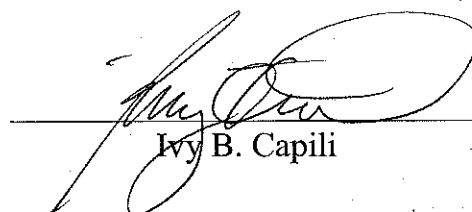
The Hon. Jack Komar  
Santa Clara County Superior Court  
c/o Clerk, Rowena Walker  
191 North First Street  
San Jose, CA 95113

The Hon. Jack Komar  
Los Angeles County Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

Further, I posted the document(s) to the website <http://www.scefilling.org>, a dedicated link to the Antelope Valley Groundwater Cases. This posting was reported as complete and without error.

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

Executed on November 6, 2009, at Los Angeles, California.

  
Ivy B. Capili