

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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**EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF MANDATE  
AND REQUEST FOR TEMPORARY STAY OF PROCEEDINGS  
EXHIBITS 1-10 [VOLUME 1 OF 2]**

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## LIST OF EXHIBIT

Exhibit 1	<p>Los Angeles County Waterworks District No. 40, Palm Ranch Irrigation District, Littlerock Creek Irrigation District, Palmdale Water District, Quartz Hill Water District, Rosamond Community Services District, City of Palmdale, California Water Service Company, City of Lancaster's Notice of Motion and Motion to Transfer and to Consolidate for all Purposes; Memorandum of Points and Authorities; Declaration of Whitney G. McDonald, filed July 15, 2009.</p> <p>Attachment 1: Judicial Council Order Granting Petition for Coordination, June 17, 2005.</p> <p>Attachment 2: Judicial Council Amended Order Assigning Coordination Trial Judge, August 31, 2005.</p> <p>Attachment 3: Los Angeles County Waterworks District No. 40, Palm Ranch Irrigation District, Littlerock Creek Irrigation District, Palmdale Water District, Quartz Hill Water District, Rosamond Community Services District, City of Palmdale, California Water Service Company, City of Lancaster's List of Operative Complaints.</p>
Exhibit 2	<p>U.S. Borax, Inc., Sheep Creek Water Company, Service Rock Products Corporation, Grimmway Enterprises, Inc., Diamond</p>

	<p>Farming Company, Crystal Organic Farms LLC, Bolthouse Properties, LLC, Lapis Land Company, LLC, A.V. United Mutual Group, Wm. Bolthouse Farms, Inc., Antelope Valley Ground Water Agreement Association's (Cross-Defendants) Peremptory Challenge to Assigned Judge (C.C.P. § 170.6), filed October 13, 2009.</p>
Exhibit 3	<p>North Edwards Water District, Big Rock Mutual Water Company, Palm Ranch Irrigation District, Llano-Del Rio Water Company, Littlerock Creek Irrigation District, Palmdale Water District, Little Baldy Mutual Water Company, Llano Mutual Water Company, Desert Lakes Community Services District, City of Palmdale's Opposition to Peremptory Challenge to Assigned Judge (CCP § 170.6), filed October 19, 2009.</p>
Exhibit 4	<p>City of Los Angeles' Joinder in Opposition to Peremptory Challenge to Assigned Judge, filed October 19, 2009.</p>
Exhibit 5	<p>Phelan Piñon Hills Community Services District's Opposition to Peremptory Challenge (C.C.P. § 170.6), filed October 19, 2009.</p>

Exhibit 6	Federal Defendants' Response to Peremptory Challenge to Assigned Judge (CCP 170.6), filed October 19, 2009.
Exhibit 7	Los Angeles County Waterworks District No. 40 and Rosamond Community Services District's Joinder in Opposition to Peremptory Challenge to Assigned Judge, filed October 20, 2009.
Exhibit 8	U.S. Borax, Inc., Sheep Creek Water Company, Service Rock Products Corporation, Grimmway Enterprises, Inc., Diamond Farming Company, Crystal Organic Farms LLC, Bolthouse Properties, LLC, Lapis Land Company, LLC, A.V. United Mutual Group, Wm. Bolthouse Farms, Inc., Antelope Valley Ground Water Agreement Association's (Cross-Defendants) Reply to Oppositions to Peremptory Challenge to Assigned Judge, filed October 22, 2009, by
Exhibit 9	Plaintiff Rebecca Willis' Response to Ex Parte Application For Order Continuing Trial Date and To AGWA's Resquest for Order Protecting Phase 2 Findings, filed October 1, 2008.
Exhibit 10	Reporter's Transcript of Proceedings - October 13, 2009.

Exhibit 11	Reporter's Transcript of Proceedings - October 27, 2009.
Exhibit 12	Santa Clara County Superior Court Minute Order from October 13, 2009, filed October 13, 2009.
Exhibit 13	Santa Clara County Superior Court Minute Order from October 15, 2009, filed October 15, 2009.
Exhibit 14	Santa Clara County Superior Court Minute Order from October 16, 2009, filed October 16, 2009.
Exhibit 15	Santa Clara County Superior Court Minute Order from October 22, 2009, filed October 2, 2009, by Santa Clara Superior Court.
Exhibit 16	Santa Clara County Superior Court Minute Order from October 23, 2009, filed October 23, 2009.
Exhibit 17	Santa Clara County Superior Court Minute Order from October 23, 2009 (2nd), filed October 23, 2009.
Exhibit 18	Respondent Court's Order After Hearing on Jurisdictional Boundaries, entered November 3, 2006.

Exhibit 19	Respondent Court's Revised Order After Hearing on Jurisdictional Boundaries, entered March 12, 2007.
Exhibit 20	Respondent Court's Order After Phase Two Trial on Hydrologic Nature of Antelope Valley, entered November 6, 2008.
Exhibit 21	Respondent Court's Order after Hearing re Re-Setting Hearing Dates for Motions to Approve Settlements and Other Motions; Case Management Conference being scheduled to February 5, 2010, entered October 28, 2009.
Exhibit 22	Reporter's Transcript of Proceedings - April 24, 2009.

**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:

**EXHIBITS IN SUPPORT OF PETITION  
FOR WRIT OF MANDATE AND  
REQUEST FOR TEMPORARY STAY OF  
PROCEEDINGS**

**EXHIBITS 1-10 [VOLUME 1 OF 2]**

by delivering copies thereof to:

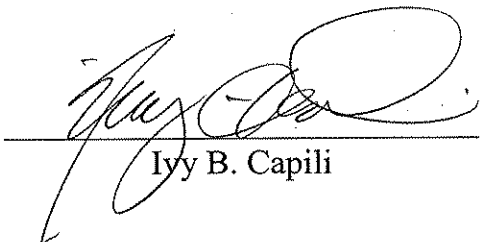
The Hon. Jack Komar  
Santa Clara County Superior Court  
c/o Clerk, Rowena Walker  
191 North First Street  
San Jose, CA 95113

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.scefiling.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.

  
Iyy B. Capili



# Exhibit 1

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**ANTELOPE VALLEY GROUNDWATER  
CASES**

Judicial Council Coordination  
Proceeding No. 4408

**NOTICE OF MOTION AND  
MOTION TO TRANSFER AND TO  
CONSOLIDATE FOR ALL  
PURPOSES; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF WHITNEY G.  
MCDONALD**

Date: August 17, 2009  
Time: 9:00 a.m.  
Dept.: 17C

(Hon. Jack Komar)

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1           **TO ALL PARTIES HERETO AND THEIR ATTORNEYS OF RECORD:**  
2           **PLEASE TAKE NOTICE** that on August 17, 2009, at 9:00 a.m., or as soon  
3 thereafter as the matter may be heard, in Department 17C of the above-entitled court  
4 located at 191 North First Street, San Jose, California, the City of Palmdale, Rosamond  
5 Community Services District, Los Angeles County Waterworks District No. 40,  
6 Littlerock Creek Irrigation District, Palm Ranch Irrigation District, California Water  
7 Service Company, Quartz Hill Water District, City of Lancaster, and Palmdale Water  
8 District (collectively “Public Water Suppliers”) will and do hereby move pursuant to  
9 Rules of Court 3.504, 3.541(b) and 3.543(a), to the extent *not* previously transferred as a  
10 result of the Judicial Council’s order of coordination, for an order transferring all matters  
11 presently pending under Judicial Council Coordination Proceeding No. 4408 from the  
12 Riverside County Superior Court and Kern County Superior Court to the Los Angeles  
13 County Superior Court, the Honorable Jack Komar, judge presiding by special  
14 assignment. The Public Water Suppliers will and do hereby further move pursuant to  
15 CCP section 1048 for an order consolidating the previously or presently transferred  
16 actions and cross-actions, as well as any as subsequent complaints or cross-complaints  
17 filed in this Judicial Council Coordination Proceeding.

18           This motion is made on the following grounds:

19           1.       These proceedings began as quiet title actions pending in the Riverside  
20 County Superior Court, followed by two additional declaratory and injunctive relief  
21 actions filed in the Los Angeles and Kern County Superior Courts. The differing venues  
22 of those actions resulted in a petition to the Judicial Council for an order of coordination.  
23 That petition was granted on June 17, 2005 (Exh. 1).

24           2.       On July 11, 2005, the Judicial Council, acting through the Chief Justice,  
25 ordered those coordinated proceedings to be venued in the Los Angeles County Superior  
26 Court, where, by special assignment, they came to be pending before the Honorable Jack  
27 Komar (Exh. 2).

28

1           3.     Following coordination and assignment, numerous other complaints and  
2 cross-complaints were filed, including two class actions. As of the filing of this motion,  
3 the actions and cross-actions identified in Exhibit 3 are pending in these coordinated  
4 complex proceedings commonly known as the Antelope Valley Groundwater  
5 Adjudication.

6           4.     Rules of Court 3.504, 3.541(b), and 3.543 authorize the Court, on its own  
7 motion, or on the motion of a party, to order coordinated cases to be transferred for all  
8 purposes.

9           5.     Because the United States of America (“United States”) has been named as  
10 a cross-defendant by the Public Water Suppliers, a special jurisdictional requirement  
11 attaches, *viz.* compliance with 43 U.S.C. § 666, commonly known as the McCarran  
12 Amendment. Through 43 U.S.C. § 666, the United States consents to jurisdiction by a  
13 state court over the comprehensive adjudication of water rights.

14           6.     To the extent not already accomplished, the Public Water Suppliers believe  
15 that an order transferring and consolidating for all purposes is appropriate herein. First,  
16 the complaints and cross-complaints concern common issues of law and fact. Second,  
17 consolidation will allow for the entry of single statements of decision in subsequent  
18 phases and a single judgment, which has numerous positive procedural implications both  
19 in the trial court and in subsequent appeals, if any are taken. Third, complete  
20 consolidation will further permit the Court to handle these already coordinated and  
21 complex proceedings as a single action.

22           7.     Pursuant to Code of Civil Procedure section 1048(a), “[w]hen actions  
23 involving a common question of law or fact are pending before the court, it may order a  
24 joint hearing or trial of any or all the matters in issue in the actions; it may order all the  
25 actions consolidated and it may make such orders concerning proceedings therein as may  
26 tend to avoid unnecessary costs or delay.”

27           8.     For these reasons, and those set forth in the accompanying memorandum of  
28 points and authorities and declaration of Whitney G. McDonald, the Court should order

1 all complaints and cross-complaints presently pending in Judicial Council Coordination  
2 Proceeding No. 4408, as well as any subsequently filed complaints or cross-complaints,  
3 transferred and consolidated for all purposes, with the service and filing procedures  
4 created through prior Court orders to remain the same.

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1 This motion is based upon this notice, the accompanying memorandum of points  
2 and authorities and declaration of Whitney G. McDonald, the pleadings and other  
3 documents on file in this action, and upon such other oral and written evidence as the  
4 Court may accept at the time of hearing this motion.

5  
6 Dated: July 15, 2009

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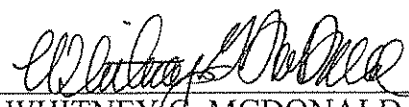
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 The Public Water Suppliers respectfully submit this memorandum of points and  
4 authorities in support of their motion for transfer and complete consolidation.  
5

6 **I. OVERVIEW**

7 In response to U. S. Borax, *et al.*'s recent motion to dismiss the Public Water  
8 Suppliers' first amended cross-complaint for failing to name allegedly indispensable  
9 parties, the Public Water Suppliers agreed to bring the instant motion to transfer and  
10 consolidate.

11 Orders of transfer and consolidation would cure the perceived ills complained of  
12 by many parties herein, including the United States' concerns that the procedural posture  
13 of these proceedings result in the comprehensive adjudication of groundwater rights in  
14 the Antelope Valley Groundwater Basin ("Basin") so as to satisfy the requirements of the  
15 McCarran Amendment (43 U.S.C. § 666).

16 Questions have been raised as to whether the Judicial Council's prior orders in  
17 these proceedings operate to transfer all coordinated actions to the Los Angeles County  
18 Superior Court. To the extent that such transfer has not already taken place, the Court is  
19 specifically authorized by Rules of Court 3.504, 3.541(b), and 3.543 to order such  
20 transfers, and should do so herein.

21 Code of Civil Procedure ("CCP") § 1048(a) vests broad discretion in the Court to  
22 order these previously coordinated and complex actions to be consolidated for all  
23 purposes. Consolidation for all purposes should be ordered for the following reasons:

24 First, apart from the unique cross-claims of the Sheldon Blum Trust against the  
25 Bolthouse entities concerning rights and obligations under a lease between them, the  
26 various complaints and cross-complaints all raise common questions of law and fact  
27 concerning Basin groundwater, including safe yield, prescription, rights priority, and  
28 whether a physical solution should be imposed, among other issues common to any

1 California groundwater adjudication. These numerous claims have been ordered  
2 coordinated and deemed complex.

3 Second, as a matter of efficiency for the Court and clarity to the parties and any  
4 subsequently reviewing court, complete consolidation would result in the entry of a  
5 single judgment, rather than a multitude of separate judgments. All concerned would  
6 benefit from single statements of decision in subsequent phases of these proceedings, and  
7 from a single judgment adjudicating the respective rights of the parties to extract or use  
8 groundwater from the Basin, whose boundaries were determined in an earlier phase of  
9 these coordinated proceedings, and imported and recycled water, and the physical  
10 solution to be imposed to assure the long term health and viability of the Basin.

11 Third, complete consolidation of these presently coordinated complex proceedings  
12 will further streamline the process of resolving the groundwater rights of the numerous  
13 parties, which will result in saving time and attorney's fees to the parties, conserving  
14 judicial resources, promoting settlement where possible, facilitating orderly discovery,  
15 enabling equitable cost allocation, and simplifying subsequent appellate review.

16 Fourth, complete consolidation should resolve the concerns of the United States  
17 (and others) that these proceedings satisfy the requirements of the McCarran Amendment  
18 by avoiding piecemeal litigation.

19 The Court should accordingly order all complaints and cross-complaints presently  
20 pending in Judicial Council Coordination Proceeding No. 4408, as well as any complaints  
21 or cross-complaints hereinafter filed in or added onto the proceeding, transferred to the  
22 Los Angeles County Superior Court and consolidated for all purposes.

23

24 **II. TO THE EXTENT NOT PREVIOUSLY ACCOMPLISHED, THE COURT**  
25 **SHOULD ORDER ALL ACTIONS TRANSFERRED**

26 Pursuant to Rule of Court 3.541(b)(1), "[t]he judge may, for the purpose of  
27 coordination and to serve the ends of justice ... [o]rder any coordinated action transferred  
28 to another court under rule 3.543." That rule, in turn, provides: "The coordination trial

1 judge may order any coordinated action or severable claim in that action transferred from  
2 the court in which it is pending to another court for a specified purpose or for all  
3 purposes. Transfer may be made by the court on its own motion or on the motion of any  
4 party to any coordinated action.” Rule of Court 3.543(a).<sup>1</sup>

5 Even absent these provisions, the trial court is vested with broad discretion to  
6 regulate these coordinated complex proceedings. Rule of Court 3.504 thus provides:

7 (b) To the extent that the rules in this chapter conflict with provisions of  
8 law applicable to civil actions generally, the rules in this chapter prevail, as  
9 provided by Code of Civil Procedure section 404.7.

10 (c) If the manner of proceeding is not prescribed by chapter 3  
11 (commencing with section 404) of title 4 of part 2 of the Code of Civil Procedure  
12 or by the rules in this chapter, or if the prescribed manner of proceeding cannot,  
13 with reasonable diligence, be followed in a particular coordination proceeding, the  
14 assigned judge may prescribe any suitable manner of proceeding that appears most  
15 consistent with those statutes and rules.”

16 *See also McGhan Med. Corp. v. Superior Court* (1992) 11 Cal.App.4th 804, 812 (“... it  
17 is the intent of the Judicial Council to vest in the coordinating judge whatever great  
18 breadth of discretion may be necessary and appropriate to ease the transition through the  
19 judicial system of the logjam of cases which gives rise to coordination.”).

20 Thus to the extent not already transferred, the Court is authorized to order  
21 whatever transfers are deemed necessary to allow for complete consolidation.

22  
23 **III. THE COURT SHOULD ORDER COMPLETE CONSOLIDATION OF THE**  
24 **CASES**

25 Pursuant to Code of Civil Procedure section 1048(a), “[w]hen actions involving a  
26 common question of law or fact are pending before the court, it may order a joint hearing

27 <sup>1</sup> These provisions are entirely separate from the statutory provisions concerning  
28 transfer of non-complex matters (CCP § 403).

1 or trial of any or all the matters in issue in the actions; it may order all the actions  
2 consolidated and it may make such orders concerning proceedings therein as may tend to  
3 avoid unnecessary costs or delay.” A noticed motion may obtain the order of  
4 consolidation. *See, Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391 (noticed  
5 motion to consolidate two actions arising from same accident involving same parties;  
6 witnesses, evidence, discovery, and questions of law and fact were common to both  
7 cases).

8 “The purpose of consolidation is merely to promote trial convenience and  
9 economy.” *Mueller v. J. C. Penny Co.* (1985) 173 Cal.App.3d 713, 722. “A  
10 consolidation of actions does not affect the rights of the parties.” *Wouldridge v. Burns*  
11 (1968) 265 Cal.App.2d 82, 86. Trial convenience and economy are promoted “by  
12 avoiding duplication of procedure, particularly in the proof of issues common to both  
13 actions.” *Id.*

14 Consolidation may be “complete” or “for trial only.” Under complete  
15 consolidation, the pleadings are treated as merged and the court issues one set of findings  
16 and one judgment. *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-1148.  
17 By comparison, consolidation for trial only keeps all pleadings, findings, and judgments  
18 separate and merely allows trial of the actions to occur together for the sake of  
19 convenience. *Sanchez*, 203 Cal.App.3d at 1395-1399.

20 Consolidation is entirely appropriate here where the various cases comprising  
21 these coordinated actions involve the same questions of law and fact, namely determining  
22 rights to groundwater, imported and recycled water within the Basin, based upon the  
23 familiar law and facts applicable in any groundwater adjudication, including safe yield,  
24 overdraft, prescription, rights priority, and the physical solution. *See, City of Barstow v.*  
25 *Mojave Water Agency* (2000) 23 Cal.4th 1224; *City of Los Angeles v. City of San*  
26 *Fernando* (1975) 14 Cal.3d 199; *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d  
27 908.

28

1 The prior unchallenged order of coordination, moreover, establishes that these  
2 cases necessarily involve predominating or significant common questions of law or fact.  
3 CCP § 404.1.

4 Complete consolidation is warranted because all of the coordinated cases relate to  
5 the same common and fundamental issue, *viz.* adjudicating the water rights of the parties  
6 within the Basin, and generally involve the same parties. Although the identical parties  
7 are not named in each of the respective complaints and cross-complaints, each shares the  
8 same primary subject matter and will result in the same outcome. *See Jud Whitehead*  
9 *Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867 (consolidation appropriate even  
10 where all parties were not the same); *see also Paduano v. Paduano* (1989) 215  
11 Cal.App.3d 346, 350-51 (separate findings issued in two consolidated actions  
12 inappropriate where “primary subject matter” was the same); *see also Committee for*  
13 *Responsible Planning v. City of Indian Wells* (1990) 225 Cal.App.3d 191, 197, 198  
14 (court may look to nature of the underlying action and the propriety of issuing a single  
15 judgment when ordering complete consolidation). By completely consolidating these  
16 already coordinated actions, the Court will be able to enter a single judgment that would  
17 unquestionably satisfy the requirements of the McCarran Amendment.

18 In addition, the single judgment that would result from complete consolidation of  
19 these matters will greatly benefit the parties and the Court in administering a physical  
20 solution. With only one judgment to govern the terms of the physical solution as to all  
21 parties, those parties, the Court, and the Watermaster will be able to refer to one single  
22 document for guidance. Therefore, post-trial practicalities also militate in favor of  
23 complete consolidation.

24 Even absent this motion, the Court may order complete consolidation *sua sponte*.  
25 The Rules of Court governing complex actions indicate that “it is the intent of the  
26 Judicial Council to vest in the coordinating judge whatever great breadth of discretion  
27 may be necessary and appropriate to ease the transition through the judicial system of the  
28 logjam of cases which gives rise to coordination.” *McGhan*, 11 Cal.App.4th at 812.

1 Thus, the court in complex coordinated actions has wide latitude in making orders to  
2 satisfy its duty to “assume an active role in managing all steps of the pretrial, discovery,  
3 and trial proceedings to expedite the just determination of the coordinated actions without  
4 delay.” Rule of Court 3.541(b). *See also* CCP § 128(a)(3) (codifying the inherent  
5 authority “[t]o provide for the orderly conduct of proceedings before it, or its officers.”).

6 Inasmuch as the circumstances calling for consolidation are so variable, and the  
7 advantages and disadvantages of consolidated proceedings are so dependent on the facts  
8 of each case, the trial court enjoys broad discretion in granting or denying consolidation.  
9 *See, e.g., Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976,  
10 978-979 (trial court’s decision whether to consolidate actions involving common  
11 questions of law or fact will not be disturbed on appeal absent clear showing of abuse of  
12 discretion); *City of Los Angeles v. Klinker* (1933) 219 Cal. 198, 211.

13  
14 **IV. COMPLETE CONSOLIDATION WILL SATISFY THE REQUIREMENTS**  
15 **OF THE MCCARRAN AMENDMENT THAT THESE PROCEEDINGS**  
16 **RESULT IN A COMPREHENSIVE ADJUDICATION OF**  
17 **GROUNDWATER RIGHTS**

18 The United States Congress was specific in providing for a limited waiver of the  
19 sovereign immunity of the United States from suit in the state courts. The legislative  
20 history demonstrates that the McCarran Amendment’s waiver is available only for the  
21 comprehensive adjudication of all water rights in a stream system. Only if the required  
22 conditions are met is there a waiver of sovereign immunity enabling the exercise of  
23 jurisdiction over the United States and the adjudication of federal water rights. In the  
24 United States Senate Report on the McCarran Amendment, the character of the water  
25 adjudications for which sovereign immunity shall be waived was described as follows:

26 “All claimants are required to appear and prove their claims; no one can refuse  
27 without forfeiting his claim, and all have the same relations to the proceeding. It  
28 is intended to be universal and to result in a complete ascertainment of all existing



1 rights ...”  
2 S. Rep. No. 82-755, at 5 (1951) (quoting *Pacific Livestock Co. v. Oregon Water Board*,  
3 (1916) 241 U.S. 441, 447-448). The United States Senate Report further described the  
4 comprehensive character required adjudications that satisfy the requirements of the  
5 McCarran Amendment by specifically incorporating a letter from Senator McCarran,  
6 sponsor of the legislation and Chairman of the Committee reporting the Bill, in reply to  
7 Senator Magnuson:

8 “S. 18 is not intended . . . to be used for any other purpose than to allow the United  
9 States to be joined in a suit wherein it is necessary to adjudicate all of the rights of  
10 various owners on a given stream. This is so because unless all of the parties  
11 owning or in the process of acquiring water rights on a particular stream can be  
12 joined as parties defendant, any subsequent decree would be of little value.”

13 *United States v. Dist. Court in and for Eagle County, Colo.* (1971) 401 U.S. 520, 525,  
14 quoting S. Rep. No. 82-755, at 9.

15 The subsequent case law is likewise clear that the McCarran Amendment waiver is  
16 only available for the comprehensive adjudication of all water rights in a stream system.  
17 As the United States Supreme Court explained, the “clear federal policy” underlying the  
18 consent to jurisdiction provided for under the McCarran Amendment is “the avoidance of  
19 piecemeal adjudication” of water rights. *Colorado River Water Conservation Dist. v.*  
20 *United States* (1976) 424 U.S. 800, 819. In accordance with this policy, the courts have  
21 ruled that federal sovereign immunity is waived to allow determination of water rights of  
22 the federal government only in a comprehensive adjudication. *Id.* at 819-20; *see also*  
23 *Arizona v. San Carlos Apache Tribe* (1983) 463 U.S. 545, 569. A comprehensive or  
24 general adjudication must involve all of the claimants to water rights along a given  
25 stream system. *Dugan v. Rank* (1963) 372 U.S. 609, 618-619; *Miller v. Jennings* (5th  
26 Cir. 1957) 243 F.2d 157, 159; *In re Snake River Basin Water System* (Idaho 1988) 764  
27 P.2d 78, 83 (1988).  
28

1           The United States Supreme Court explained that McCarran adjudications must be  
2 all inclusive because “the allocation of water essentially involve the disposition of  
3 property and are best conducted in unified proceedings.” *Colorado River Water*  
4 *Conservation Dist.*, 424 U.S. at 819. The adjudication of rights to the use of water of a  
5 river system “has no exceptions and . . . includes appropriate rights, riparian rights, and  
6 reserved rights.” *Dist. Court in and for Eagle County, Colo.* 401 U.S. at 524.

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V. CONCLUSION

For these reasons, the Court should accordingly order a transfer to the Los Angeles County Superior Court and a complete consolidation of all cases previously coordinated.

Dated: July 15, 2009

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WHITNEY G. MCDONALD

By:   
WHITNEY G. MCDONALD  
Attorneys for Defendant, Cross-  
Complainant, and Cross-Defendant  
CITY OF PALMDALE



1 Superior Court Case No. BC 325201, have been superceded by the first amended cross-  
2 complaint on the Public Water Suppliers in JCCP No. 4408, and are no longer operative.

3 7. The Antelope Valley Groundwater Cases collectively seek to adjudicate the  
4 rights to groundwater, imported water and recycled water in the Antelope Valley  
5 Groundwater Basin, the jurisdictional boundaries of which were determined in the Phase  
6 1 proceedings (“Basin”) on a comprehensive basis.

7 8. The parties to the Antelope Valley Groundwater Cases variously assert a  
8 wide variety of claims and forms of relief. Many parties seek to quiet title, declaratory  
9 and injunctive relief as to the right to extract and use Basin groundwater, a determination  
10 of the safe yield of the Basin, that rights have been acquired or lost by prescription, that  
11 certain rights enjoy priority over other rights, that money damages should be paid if  
12 rights have been lost to public entities through prescription, and assert myriad other  
13 types of claims typically associated with comprehensive groundwater adjudications in  
14 California.

15 9. The trials to be conducted in these phased proceedings will concern  
16 common questions and issues of law and fact, and will rely heavily on expert witness  
17 testimony. For example, determining the safe yield of the Basin will impact resolution of  
18 the claims and cross-claims of nearly every party. Whether production rights have been  
19 acquired or lost by prescription, similarly, is an issue of concern to all parties. The form  
20 of the physical solution to be imposed, if one were to be imposed, would, likewise, affect  
21 the conduct of every party to these proceedings.

22 10. The Public Water Suppliers respectfully suggest that judicial economy is  
23 served well by enabling the Court to enter a single judgment at the conclusion of these  
24 proceedings, and that it should not be required to prepare a separate judgment to be  
25 entered on each complaint and cross-complaint.

26 11. The Public Water Suppliers further wish to address the concerns of the  
27 United States of America that the requirements of the McCarran Amendment (43 U.S.C.  
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§ 666) are satisfied, and believe that the comprehensive relief sought herein should accomplish that goal.

12. As the Court is thoroughly familiar with the parties and claims at issue herein, the Public Water Suppliers will dispense with a further, more thorough explanation of the underlying facts and claims. Should any party so desire, the Public Water Suppliers will supplement this declaration on reply.

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

Executed this 15th day of July, 2009.

  
Whitney G. McDonald

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

*C. Carr*  
BY C. CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Coordination Proceeding	)	
Special Title (Rule 1550(b))	)	
	)	
<b>ANTELOPE VALLEY</b>	)	
<b>GROUNDWATER CASES</b>	)	
	)	JUDICIAL COUNCIL COORDINATION
Included actions:	)	PROCEEDING NO. 4408
	)	
Los Angeles County Waterworks	)	Superior Court of California
District No. 40 v. Diamond	)	County of Los Angeles
Farming Co.	)	BC 325 201
	)	
Los Angeles County Waterworks	)	Superior Court of California
District No. 40 v. Diamond	)	County of Kern
Farming Co.	)	S-1500-CV 254-348
	)	
Wm. Bolthouse Farms, Inc. v.	)	Superior Court of California
	)	County of Riverside - Consolidated
City of Lancaster	)	Actions
	)	(RIC 353 840
Diamond Farming Co. v.	)	
City of Lancaster	)	RIC 344 436
	)	
Diamond Farming Co. v.	)	RIC 344 668)
Palmdale Water District	)	
	)	
	)	

---

ORDER GRANTING PETITION FOR COORDINATION

Exhibit 1

The actions filed in Los Angeles and Kern County entitled *Los Angeles County Waterworks District No 40 vs Diamond Farming*, case no. BC 325201 and Kern County Superior Court case no. S-1500-CV 254348 are deemed complex pursuant to CRC 1800.

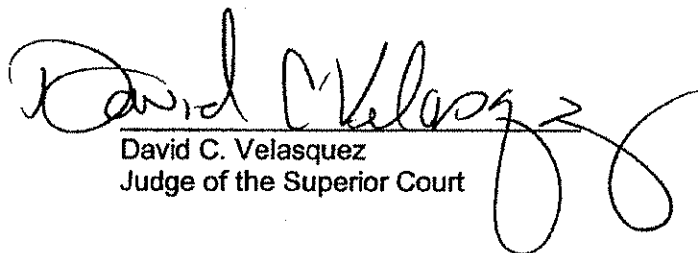
Good cause appearing that the coordination of the included actions is appropriate under the standards specified in CCP §§ 404 and 404.1, it is hereby ordered that the petition of Los Angeles County Waterworks District No. 40 for coordination of the included actions is granted; except, however, that the Riverside Superior Court retain jurisdiction over the consolidated case of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436 (the lead action); *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668; and *Diamond Farming Co. v. Palmdale Water District*, case no RIC 353840, currently in trial, solely for the purpose of granting a motion for mistrial and for hearing and determining issues related to sanctions, costs of suit and fees resulting from that mistrial. In all other respects, that consolidated action is coordinated pursuant to this order.

The court orders coordination of *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, LASC case no. BC 32501; *Los Angeles County Waterworks District No. 40 v. Diamond Farming Company et al.*, KCSC case no. S-1500-CV-25438; and the consolidated action of *Wm. Bolthouse Farms, Inc. v. City of Lancaster*, et al., RCSC case no. RIC 344436, *Diamond Farming Co. v. City of Lancaster*, case no. RIC 344668 and *Diamond Farming Co. v. Palmdale Water District*, case no. RIC 353840. The Court of Appeal, 4th Appellate District, Div. 2 (Riverside) is designated as the reviewing court with appellate jurisdiction for any petition for relief relating to any order in this proceeding.

This court recommends that the coordinated action be assigned to the Superior Court, County of Los Angeles, Complex Litigation. However, this court recommends that the Judicial Counsel appoint a judge from a neutral court (i.e., a sitting judge neither from Los Angeles County Superior Court nor Kern County Superior Court), or in the alternative, a retired judge to sit on assignment, to preside over this coordinated action as the coordination trial judge.

The clerk is directed to serve a copy of this order on the chair of the Judicial Council; the presiding judges of the Superior Courts of Los Angeles County, Kern County, Riverside County, and on counsel for all parties.

June 17, 2005

  
David C. Velasquez  
Judge of the Superior Court



**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUN 17 2005

ALAN SLATER, Clerk of the Court

*C. Carr*  
BY C. CARR

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ANTELOPE VALLEY GROUNDWATER CASES Plaintiff(s)	CASE NUMBER JCCP 4408
	CERTIFICATE OF SERVICE BY MAIL of ORDER GRANTING PETITION FOR COORDINATION dated 6-17-05

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on, 6-20-05 I served the ORDER GRANTING PETITION FOR COORDINATION, dated 6-17-05, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Judicial Council of California  
Administrative Office of the Courts  
Attn: Carlotta Tillman  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Los Angeles County Superior Court  
Executive Officer/Clerk, John A. Clarke  
111 North Hill Street  
Los Angeles, CA 90012

Riverside County Superior Court  
Executive Officer/Clerk, Jose Octavio  
Guillen  
4100 Main Street  
Riverside, CA 92501

Kern County Superior Court  
Court Executive Officer, Terry McNally  
1415 Truxton Ave.  
Bakersfield, CA 93301-4172

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90017

Henry Weinstock, Nossman, Guthner,  
Knox, Elliott, 445 South Figueroa St., 31 st  
Floor, Los Angeles, Ca 90071

ALAN SLATER,  
Executive Officer and Clerk of the Superior Court  
In and for the County of Orange

DATED: 6-20-05

By: *Christine Carr*  
Christine Carr, Deputy Clerk

**CERTIFICATE OF SERVICE BY MAIL**

Page 3 of 3

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA  
 455 Golden Gate Avenue, San Francisco, CA 94102-3688

**FILED**

SEP 02 2005

Coordination Proceeding )  
 Special Title (Rule 1550(b)) )  
 )  
 ANTELOPE VALLEY )  
 GROUNDWATER CASES )  
 )  
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KIRI TORRE  
 Chief Executive Officer/Clerk  
 Superior Court of California, County of Santa Clara  
 BY *[Signature]*  
 ROWENA K. WILSON, DEPUTY

JUDICIAL COUNCIL  
 COORDINATION PROCEEDING  
 NO. 4408

**AMENDED ORDER ASSIGNING  
 COORDINATION TRIAL JUDGE**

The order heretofore made authorizing the Presiding Judge of the Superior Court of California, County of Los Angeles to assign this matter to a judge of the court to sit as coordination trial judge is hereby terminated.

THE HONORABLE JACK KOMAR of the Superior Court of California, County of Santa Clara, is hereby assigned pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

**COORDINATED ACTIONS**

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Los Angeles	BC 325 201	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.

Exhibit 2

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Kern	S-1500-CV 254 348	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California County of Riverside (Consolidated Actions)	(RIC 353 840 ( (RIC 344 436 ( (RIC 344 668 (	(Wm. Bolthouse Farms, Inc. ( v. City of Lancaster (Diamond Farming Co. v. ( City of Lancaster (Diamond Farming Co. v. ( Palmdale Water District

The coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court with appellate and writ jurisdiction. (Code of Civ. Proc., §404.2; rule 1505(a)).

Pursuant to rules 1501(17) and 1540, every paper filed in a coordinated action must be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:


Hon. Jack Komar  
Judge of the Superior Court  
of California, County of Santa Clara  
191 North First Street  
San Jose, CA 95113

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council must be sent to the following address:

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordination)  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action, pursuant to rule 1540.

Dated: August 31, 2005



Chief Justice of California and  
Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: <b>4408</b>	CASE NUMBER:
--	--------------

1. I am over the age of 18 and not a party to this legal action.
2. I am employed in the City and County of San Francisco and my business address is

**455 Golden Gate Avenue  
San Francisco, CA 94102-3688**

3. On August 31, 2005, I served a copy of the following documents:

- ORDER ASSIGNING COORDINATION MOTION JUDGE
- ORDER ASSIGNING COORDINATION TRIAL JUDGE
- ORDER ASSIGNING COORDINATION MOTION JUDGE AND SETTING DATE FOR HEARING
- AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
- AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
- OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

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

Date: August 31, 2005

  
Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408

Mr. Erick L. Garner  
Mr. Jeffrey V. Dunn  
Mr. Marc S. Ehrlich  
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Raymond G. Fortner, Jr.  
County Counsel  
Frederick W. Pfaeffle  
Senior Deputy County Counsel  
OFFICE OF COUNTY COUNSEL  
COUNTY OF LOS ANGELES  
500 West Temple Street  
Los Angeles, CA 90012



**Exhibit 3**

**OPERATIVE COMPLAINTS**

*Wm Bolthouse Farms, Inc. vs. City of Lancaster, et al.*, Riverside County Superior Court Case No. RIC 353840;

*Diamond Farming Co., et al. vs. City of Lancaster, et al.*, Riverside County Superior Court Case No. RIC 344436;

*Diamond Farming Co. vs. Palmdale Water District, et al.*, Riverside County Superior Court Case No. RIC 344668;

*Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al.*, Kern County Superior Court Case No. S-1500-CV 254-348

*Los Angeles County Waterworks District No. 40 vs. Diamond Farming Co., et al.*, Los Angeles County Superior Court Case No. BC 325201

*Rebecca Lee Willis, etc. vs. Los Angeles County Waterworks District No. 40, et al.*, Los Angeles County Superior Court Case No. BC 364553;

*Richard A. Wood, etc. vs. Los Angeles County Waterworks District No. 40, et al.*, Los Angeles County Superior Court Case No. BC 391869; and,

And all cross-complaints filed in the above-actions or in these coordinated proceedings.

**Exhibit 3**

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**PROOF OF SERVICE**

I, Kelley Herrington, declare:

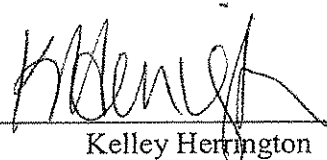
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On July 15, 2009, I served the within documents:

**NOTICE OF MOTION AND MOTION TO TRANSFER AND TO CONSOLIDATE FOR ALL PURPOSES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF WHITNEY G. MCDONALD**

- by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

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

Executed on July 15, 2009.

  
\_\_\_\_\_  
Kelley Herrington

# Exhibit 2

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18 Attorneys for BOLTHOUSE PROPERTIES, LLC  
 19 and WM. BOLTHOUSE FARMS, INC.

20 *(List of Counsel Continues on Next Page)*

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 22 COUNTY OF LOS ANGELES

23 Coordination Proceeding  
 24 Special Title (Rule 1550(b))

Judicial Council Coordination  
 Proceeding No. 4408

25 **ANTELOPE VALLEY GROUNDWATER CASES**

Assigned to  
 The Honorable Jack Komar

26 Included Actions:

27 **Los Angeles County Waterworks District No. 40 v.  
 28 Diamond Farming Co.**  
 Superior Court of California, County of Los Angeles,  
 Case No. BC 325 201

**PEREMPTORY  
 CHALLENGE TO ASSIGNED  
 JUDGE (C.C.P. § 170.6)**

**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  
 (Consolidated Actions)

1 *List of Counsel (Continued):*

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26 Properties, Inc., SHEEP CREEK WATER  
27 COMPANY, INC., and A.V. UNITED MUTUAL  
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26 Attorneys for the ANTELOPE VALLEY  
27 GROUNDWATER AGREEMENT ASSOCIATION  
28 ("AGWA")

1 TO ALL PARTIES, THEIR COUNSEL OF RECORD AND THE COURT:

2 We, the undersigned counsel, declare as follows:

3 1. We are all attorneys duly licensed to practice law in the courts of the State of  
4 California. We submit this declaration as Cross-Defendants' Peremptory Challenge to the Honorable  
5 Jack Komar. We have personal knowledge of the facts stated herein, and we make this declaration  
6 based upon personal knowledge, and, if called as a witness, could and would competently testify  
7 thereto.

8 2. On October 13, 2009, despite significant opposition from numerous parties, including  
9 our clients, Judge Komar granted the Public Water Suppliers' Motion to Transfer and Consolidate for  
10 All Purposes each of the actions pending as part of Judicial Council Coordination Proceeding 4408  
11 (also known as the Antelope Valley Groundwater Cases). This consolidation, among other things,  
12 has the effect of unwillingly making our clients parties to two class actions involving separate causes  
13 of action in which they have not been named.

14 3. The law provides that upon consolidation, the opportunity to exercise a peremptory  
15 challenge under California Civil Procedure Code section 170.6 is available.

16 A party's acquiescence of a judge to hear one action does not impair his  
17 or her right to exercise a challenge to prevent that judge from hearing  
18 another matter, even if that matter raises issues closely related to those  
19 in the first action. [Citations.] 'Assigning the same judge to hear a  
20 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.'

21 *Nissan Motor Corp. v. Super Ct.*, 6 Cal. App. 4th 150, 155 (1992).

22 A party to any of the consolidated cases may disqualify the assigned  
23 judge by a timely challenge under CCP section 170.6, even where that  
24 party previously acquiesced to the judge in one of the consolidated  
cases., i.e., consolidation with another case may create a second chance  
for a section 170.6 challenge.

25 *Weil & Brown*, Section 12:369, Civil Procedure Before Trial (2009) (citing *Nissan Motor Corp.*).

26 4. The Honorable Jack Komar is prejudiced against the Cross-Defendants, or the  
27 interests of the Cross-Defendants, in this newly consolidated action so that we believe the Cross-  
28 Defendants cannot have a fair or impartial trial or hearing before him.

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

Executed this 12th day of October at San Francisco, California.

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

By: William M. Sloan  
William M. Sloan  
Attorneys for U.S. BORAX, INC.

Executed this 12th day of October at Bakersfield, California.

RICHARD G. ZIMMER (BAR NO. 107263)  
T. MARK SMITH (BAR NO. 162370)  
CLIFFORD & BROWN

By: \_\_\_\_\_  
Richard G. Zimmer  
Attorneys for BOLTHOUSE PROPERTIES,  
LLC and WM. BOLTHOUSE FARMS, INC.

Executed this 12th day of October at Bakersfield, California.

BOB H. JOYCE (BAR NO. 84607)  
ANDREW SHEFFIELD (BAR NO. 220735)  
KEVIN E. THELEN (BAR NO. 252665)  
LAW OFFICES OF LEBEAU THELEN, LLP

By: \_\_\_\_\_  
Bob H. Joyce  
Attorneys for DIAMOND FARMING  
COMPANY, a California corporation,  
CRYSTAL ORGANIC FARMS, a limited  
liability company, GRIMMWAY Enterprises,  
Inc., and LAPIS LAND COMPANY, LLC.

Executed this 12th day of October at Riverside, California.

MICHAEL D. DAVIS (BAR NO. 93678)  
GRESHAM SAVAGE NOLAN & TILDEN, APC

By: \_\_\_\_\_  
Michael D. Davis  
Attorneys for SERVICE ROCK PRODUCTS  
CORPORATION, as successor-in-interest to  
Owl Properties, Inc., SHEEP CREEK WATER  
COMPANY, INC., and A.V. UNITED  
MUTUAL GROUP

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


3 Executed this 12th day of October at  
4 San Francisco, California.

EDGAR B. WASHBURN  
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MORRISON & FOERSTER LLP

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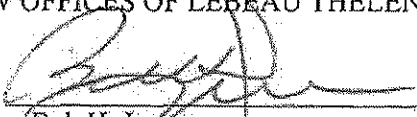
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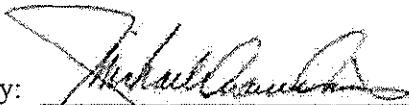
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24 By:  \_\_\_\_\_  
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Executed this 12th day of October at Santa Barbara, California.

MICHAEL T. FIFE (BAR NO. 203025)  
BRADLEY J. HERREMA (BAR NO. 228976)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP



By: \_\_\_\_\_  
Michael T. Fife

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION ("AGWA")

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**PROOF OF SERVICE**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

I further declare that on October 13, 2009, I served a copy of the attached PEREMPTORY CHALLENGE TO ASSIGNED JUDGE (c.c.p. § 170.6) by electronically posting a true copy thereof to Santa Clara County Superior Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C — <http://www.scefiling.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope Valley Groundwater matter).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed at San Francisco, California, on October 13, 2009.

Catherine L. Berté  
(typed)

  
(signature)

# Exhibit 3

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13 [See Additional Counsel – next page]

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 15 **COUNTY OF LOS ANGELES**

<p>17 ANTELOPE VALLEY GROUNDWATER )          CASES )</p> <p>18 Included Actions: )          19 Los Angeles County Waterworks District No. 40 )          v. Diamond Farming Co. Superior Court of )          20 California, County of Los Angeles, Case No. BC )          21 325201; Los Angeles County Waterworks District )          No. 40 v. Diamond Farming Co., Superior Court )          22 of California, County of Kern, Case No. S-1500- )          CV-234348; Wm. Bolthouse Farms, Inc. v. City )          23 of Lancaster Diamond Farming Co. v. City of )          Lancaster v. Palmdale Water District, Superior )          24 Court of California, County of Riverside, )          consolidated actions, Case Nos. RIC 353840, )          25 RIC 344436, RIC 344668 )</p> <p>26 [Include class actions] )          27 )</p>	<p>Judicial Council Coordination          Proceeding No. 4408          [Santa Clara Superior Court Case No. 1-05-          CV-049053]</p> <p>[Assigned for All Purposes to the          Honorable Jack Komar]</p> <p><b>OPPOSITION TO PEREMPTORY          CHALLENGE TO ASSIGNED JUDGE          (CCP § 170.6)</b></p>
---	--

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## I. INTRODUCTION

The following opposition to the peremptory challenge to Judge Komar filed by certain landowner parties. This peremptory challenge must be overruled because it is untimely.

Consolidation does not provide a new opportunity for a peremptory challenge because judicial coordination rules do not allow for it, and all parties have already appeared before Judge Komar on all matters subject to consolidation. Judge Komar has already conducted two phases of trial and made significant determinations of key, factual issues. The time to peremptorily challenge this court passed years ago. This challenge is untimely.

## II. PROCEDURAL HISTORY

On July 11, 2005 the Chief Justice of the California Supreme Court coordinated the various cases which compose this action pursuant to Code of Civil Procedure section 404.3 and Court Rule 1540. 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. Notice of Judge Komar's assignment was given on September 2, 2005.

On October 13, 2009, the court granted the motion of the public water suppliers to consolidate the previously coordinated cases for all purposes. A number of landowner parties filed a peremptory challenge the same day, 1,502 days after notice was given of Judge Komar's assignment.

All of the parties who have peremptorily challenged Judge Komar either participated in the phase 2 trial or could have participated in the phase 2 trial which started on October 6, 2008. The court is requested to take judicial notice of the Docket, which demonstrates that all of the parties which have issued the preemptory challenge appeared in the cases which were consolidated prior to the trial on October 6, 2008.

## III. ARGUMENT

**A. The challenge is untimely under Court Rule 3.516 because the challenge was not issued within twenty days.**

Coordinated proceedings, such as the instant case, have specialized timing provisions for disqualification motions. Rule 3.516 provides that:



1 "A party making a preemptory challenge by motion or affidavit of prejudice regarding an assigned  
2 judge must submit it in writing to the assigned judge within twenty days after service of the order  
3 assigning the judge to the coordination proceeding."

4 The case was ordered coordinated June 17, 2005. The order assigning Judge Komar to hear all the  
5 coordinated cases was made on August 31, 2005. Service of this order was made on September 2, 2005.  
6 (See Exhibit "A" attached hereto.) Defendants failed to issue a preemptory challenge within twenty days  
7 of this date. Therefore, this challenge is more than four years too late.

8 The application of this rule to "new parties" was considered in a case arising from a complex  
9 litigation filed in Santa Clara County. In *Industrial Indemnity Co. v. Superior Court* (1989) 214  
10 Cal.App.3d 259, 262 Cal.Rptr. 544, newly added parties to a court proceeding attempted to disqualify the  
11 Honorable Conrad L. Rushing. Judge Rushing denied the motion on the grounds that it was untimely. In  
12 upholding this decision, the court of appeal's held:

13 "The effect of rules governing coordination cases is to exclude add-on parties from the right  
14 to preemptorily challenge the coordination trial judge." (*Industrial Indemnity Co. v. Superior  
15 Court, supra*, 214 Cal.App.3d at 263, 262 Cal.Rptr.  
16 at 546.)

17 The landowners suggest they should be considered "new parties" to two class actions upon  
18 consolidation. However, *Industrial Indemnity* makes it clear that even if the landowners were "new" to  
19 any aspect of this case, the special timing provisions of Rule 3.516 bar their challenge as untimely.  
20 Accordingly, the motion must be overruled.

21 **B. The challenge is also untimely under Code of Civil Procedure section 170.6**

22 By arguing that even under the terms of 170.6, the preemptory challenge fails, the PWS are not  
23 conceding that Court Rule 3.516 does not apply. Nevertheless, addressing the preemptory challenge as  
24 argued by the Landowners, the challenge still fails.

25 Even if Rule 3.516 somehow did not apply to this case, the motion would still be untimely for  
26 three separate reasons. First, a challenge under 170.6 must be filed within 10 days after a party has  
27 appeared in the action (Code of Civ. Proc. § 170.6(a)(2)). Prior to consolidation, Judge Komar was the  
28 assigned judge for each case and had been the assigned judge since August 31, 2005. Since notice was

1 given to all parties that Judge Komar was assigned on September 2, 2005, under this section, the  
2 challenge must have been made on or before September 12, 2005.

3 Next, Code of Civil Procedure section 170.6 provides in part:

4 “In no event shall any judge, court commissioner, or referee entertain the motion if it be made  
5 after the drawing of the name of the first juror, or if there be no jury, after the making of an  
6 opening statement by counsel for plaintiff, or if there is no opening statement by counsel for  
7 plaintiff, then after swearing in the first witness or the giving of any evidence or after trial of the  
8 cause has otherwise commenced.”

9 Here, this court has presided over two phases of trial involving the landowners. The first phase of  
10 trial was for purposes of determining the significant, factual issue of the scope of the court’s jurisdiction,  
11 including the identity of landowners who needed to be included in the case. All of the moving parties  
12 were represented at this trial. The second phase of trial included a factual determination of the  
13 characteristics of the basin, including a determination that water in the basin commingled throughout the  
14 basin. Therefore, pursuant to C.C.P. § 170.6, landowners were required to submit this challenge no later  
15 than the first phase of trial.

16 Finally, the challenge must be made prior to any hearing of any contested issues of law and fact.  
17 (*Pacific etc. Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72, 79.)

18 The court has held:

19 “[A]n otherwise timely peremptory challenge must be denied if the judge has presided at an  
20 earlier hearing which involved a determination of contested factual issues relating to the  
21 merits.” (*Grant v. Superior Court* (2001) 90 Cal.App.4<sup>th</sup> 518, 525, 108 Cal.Rptr.2d 825.)

22 Even if the court hearings so far were not considered to be the trial of the case, they involved the  
23 determination of contested factual issues relating to the merits. In particular, the determination in phase  
24 two that there is but a single groundwater basin is essential to the comprehensive adjudication of water  
25 rights which is at the heart of the case.

26 Therefore, even if the timing provisions of C.C.P. § 170.6 applied to this case, the landowners’  
27 opportunity to challenge the judge would have expired approximately four years ago. The statute is  
28 clearly designed to prevent precisely this situation: where a party is dissatisfied with the result and wishes

1 to “shop” for a new judge. Therefore, permitting this untimely challenge would be extremely unfair to the  
2 remaining parties in this case, and would encourage sharp practices.

3 **C. *Nissan Motors v. Superior Court* affords Landowners no relief**

4 *Nissan Motors Corporation In USA v. Superior Court* (1992) 6 Cal.App.4th 150, the only case  
5 cited by Defendants, has no application to this case. In *Nissan*, there were three separate lawsuits in three  
6 courts before three separate judges. Judges Ross, Parslow, and Luesebrink. One of the judges, Judge  
7 James R. Ross, ordered that all three actions be consolidated into his court. The litigants before Judge  
8 Parslow and Judge Luesebrink therefore never had the opportunity to challenge Judge Ross. The  
9 defendant in each of the three actions, Nissan Motor Corp., moved to disqualify Judge Ross pursuant to  
10 CCP § 170.6 only *as to the actions that had not yet been before Judge Ross*. The appellate court ruled  
11 that as to the actions that were new to Judge Ross, the challenge was timely because it was made within  
12 ten days after the assignment of those cases to Judge Ross.

13 The important component of this decision was the fact that Judge Ross had never before presided  
14 over the two new cases. The court made a special point to note that:

15 “The three cases arise out of different injuries and damages, occurring in different accidents  
16 involving different vehicles at different times and places, and under different fact patterns.  
17 They are thus three separate and distinct cases, entitled to separate challenges under Section  
18 170.6.” (*Nissan, supra*, 6 Cal.App.4<sup>th</sup> at 155, 7 Cal.Rptr.2d at 303.)

19 The difference between *Nissan Motors* and the case at hand is that here, all parties were before  
20 Judge Komar prior to consolidation. The act of consolidation did not result in a new judge being assigned  
21 to the case, as it did in *Nissan Motors*. Since the act of consolidation did not impose a new judge on  
22 anybody, there is no basis to revive the right to make a preemptory challenge.

23 The *Nissan Motors* court comments that “A party's acquiescence of a judge to hear one action  
24 does not impair his or her right to exercise a challenge to prevent that judge from hearing another matter”  
25 *Nissan Motor Corporation In USA v. Superior Court, supra*, 6 Cal.App.4th 150, 155. Defendants had the  
26 right to challenge Judge Komar. Defendants failed to timely exercise that right over four years ago.

27 The landowners would argue that consolidation equals the right to a preemptory challenge.  
28 Because all of the parties have appeared before Judge Komar more the ten days before the challenge was

1 issued, and because a contested hearing of law and fact has occurred, section 170.6 does not allow a  
2 preemptory challenge.

3  
4 **III. CONCLUSION**

5 Whether the timing of this motion is governed by Rule 3.516 or C.C.P. § 170.6, the motion has  
6 been made several years too late. Since Judge Komar has already conducted two phases of trial, and  
7 decided significant factual issues applicable to *all claims* in each case, disqualification of the judge at this  
8 point would seriously prejudice the non-moving parties. Accordingly, the motion must be denied.

9  
10 DATED: October 19, 2009.

**LEMIEUX & O'NEILL**

11 By: \_\_\_\_\_  
12 W. Keith Lemieux  
13 Attorneys for Littlerock Creek Irrigation  
14 District, et al.

15 **LAGERLOF, SENEAL, GOSNEY & KRUSE, LLP**

16 /s/  
17 By: \_\_\_\_\_  
18 Thomas S. Bunn  
19 Attorneys for Palmdale Water District

20 **RICHARD, WATSON & GERSHON**

21 /s/  
22 By: \_\_\_\_\_  
23 James L. Markman  
24 Attorneys for City of Palmdale.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, )  
3 ) ss.  
4 COUNTY OF VENTURA )

5 I am employed in the County of Ventura, State of California. I am over the age of 18 and not a  
6 party to the within action. My business address is 2393 Townsgate Road, Suite 201, Westlake Village,  
7 California 91361.

8 On **October 19, 2009** I posted the following document(s) to the website <http://www.scefilling.org>,  
9 a dedicated link to the Antelope Valley Groundwater Cases:

10 **OPPOSITION TO PEREMPTORY CHALLENGE TO ASSIGNED JUDGE (CCP § 170.6)**

11 I declare under penalty of perjury under the laws of the United State of America that the above is  
12 true and correct.

13 Executed on October 19, 2009, in Westlake Village, California.

14 /s/

15 \_\_\_\_\_  
16 KATHI MIERS  
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**SERVICE LIST**

**Antelope Valley Groundwater Cases: Case No. 1: 05-CV-049053**

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14	<b>Court Personnel:</b>	
15	Presiding Judge of the Superior Court of California, County of Los Angeles 111 N. Hill Street Los Angeles, CA 90012-3014	CRC Rules 1501(17) and 1540: Coordination Trial Judge
16		
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18	Honorable Jack Komar Santa Clara County Superior Court 191 North First Street, Dept. 17C San Jose, CA 95113	<b>By Mail</b> Tel: 508/882-2286; Fax: 408/882-2293 <a href="mailto:rwalker@scscourt.org">rwalker@scscourt.org</a>
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20	Superior Court of California County of Los Angeles Stanley Mosk Courthouse—Dept. 1, Rm 534 111 North Hill Street Los Angeles, CA 90012	<b>Original Document(s) to be filed at this location.</b>
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24	*Chair, Judicial Council of California Administrative Office of the Courts Attn: Appellate & Trial Court Judicial Services (Civil Case Coordination) 455 Golden Gate Avenue San Francisco, CA 94102-3688	CRC Rule 1511: *Serve only when required to be transmitted to Judicial Council.
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28	Opp2Peremptory.doc	- 13 -

# Exhibit 4

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Exempt from Filing Fee Pursuant to  
 Government Code Section 6103

20 Attorneys for Defendant CITY OF LOS ANGELES

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 22 COUNTY OF LOS ANGELES

23 ANTELOPE VALLEY  
 24 GROUNDWATER  
 25 CASES

Judicial Council Coordination  
 Proceeding No. 4408  
 [Santa Clara Superior Court Case No. 1-05-CV-  
 049053]

26 Included Actions:  
 27 Los Angeles County Waterworks District  
 28 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-234348; Wm. Bolthouse  
 Farms, Inc. v. City of Lancaster Diamond  
 Farming Co. v. City of Lancaster v.  
 Palmdale Water District, Superior Court of  
 California, County of Riverside,  
 consolidated actions, Case Nos. RIC  
 353840, RIC 344436, RIC 344668  
 [Include class actions]

[Assigned for All Purposes to the  
 Honorable Jack Komar]

**CITY OF LOS ANGELES' JOINDER IN  
 OPPOSITION TO PEREMPTORY  
 CHALLENGE TO ASSIGNED JUDGE  
 (CCP § 170.6)**

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The City of Los Angeles hereby joins in the opposition presented on behalf of the public water suppliers<sup>1</sup> to the preemptory challenge to Judge Komar filed by certain landowner parties. This preemptory challenge must be overruled because it is untimely.

ROCKARD J. DELGADILLO, City Attorney  
Richard M. Brown, Senior Assistant City Attorney for  
Water and Power

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

By Janet K. Goldsmith  
Janet K. Goldsmith (By LL)  
Attorneys for Defendant CITY OF LOS ANGELES

<sup>1</sup> Opposing parties are as follows: Littlerock Creek Irrigation District, Palm Ranch Irrigation District, North Edwards Water District, Desert Lakes Community Services District, Llano Del-Rio Water Co., Llano Mutual Water Co., Big Rock Mutual Water Co., and Little Baldy Water Co. [...]

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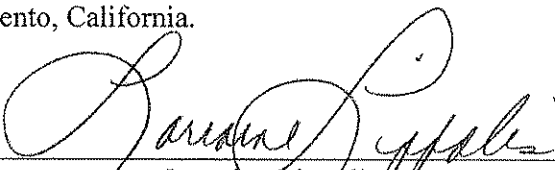
**PROOF OF SERVICE**

I, Lorraine Lippolis, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 16, 2009, I served a copy of the within document: City of Los Angeles' Joinder in Opposition to Peremptory Challenge to Assigned Judge. via electronic posting to the Santa Clara Superior Court E-Filing website, <http://www.scefiling.org/cases/casehome.jsp?caseId=19> .”

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

Executed on October 19, 2009 at Sacramento, California.

  
\_\_\_\_\_  
Lorraine Lippolis

**EXHIBIT "A"**

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PROOF OF SERVICE

I, Lorraine Lippolis, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 16, 2009, I served a copy of the within document: City of Los Angeles' Joinder in Opposition to Peremptory Challenge to Assigned Judge. via electronic posting to the Santa Clara Superior Court E-Filing website, <http://www.scefiling.org/cases/casehome.jsp?caseId=19>."

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

Executed on October 19, 2009 at Sacramento, California.

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Lorraine Lippolis

EXHIBIT "A"

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EXEMPT FROM FILING FEES UNDER  
GOVERNMENT CODE § 6103

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Phelan Piñon Hills Community Services District

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

Coordination Proceeding )  
Special Title (Rule 1550(b)) )  
**ANTELOPE VALLEY** )  
**GROUNDWATER CASES** )  
Included Actions: )  
*Los Angeles County Waterworks District* )  
*No. 40 v.* )  
*Diamond Farming Co., et al.,* )  
Los Angeles County Superior Court, Case )  
No. BC 325 201 )  
*Los Angeles County Waterworks District* )  
*No. 40 v.* )  
*Diamond Farming Co., et al.,* )  
Kern County Superior Court, 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.* )  
Riverside County Superior Court, )  
Consolidated Action, Case Nos. RIC 353 )  
840, RIC 344 436, RIC 344 668 )  
AND RELATED CROSS-ACTIONS )

Judicial Council Coordination Proceeding  
No. 4408

For Filing Purposes Only: Santa Clara  
County Case No.: 1-05-CV-049053

Assigned to the Honorable Jack Komar,  
Department 17

**OPPOSITION TO PEREMPTORY  
CHALLENGE (C.C.P. §170.6)**

Date: October 27, 2009  
Time: 9:00 a.m.  
Dept.: 17C

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I.

INTRODUCTION

Phelan Piñon Hills Community Services District (“PPHCSD”) opposes the peremptory challenge to Judge Komar filed by attorneys for U. S. Borax, Inc., Bolthouse Properties, LLC, Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., Lapis Land Company, LLC, Service Rock Products Corporation, Sheep Creek Water Company, Inc., A. V. United Mutual Group, and Antelope Valley Groundwater Agreement Association (“AGWA”). Defendants’ peremptory challenge is untimely and is filed after two trials involving determination of law and fact.

On October 13, 2009, Judge Komar granted Public Water Suppliers’ Motion to Transfer and Consolidate for All Purposes each of the actions pending as part of Judicial Council Coordination Proceeding 4408, also known as Antelope Valley Groundwater Cases. Defendants immediately filed their Peremptory Challenge to Judge Komar.

Consolidation of cases in coordinated proceedings does not create a new opportunity for a peremptory challenge. Judicial coordination rules do not allow for it. The defendants have already appeared before Judge Komar on all matters subject to consolidation, and have participated in trials of fact and law before Judge Komar, in which he made significant determinations of key factual issues. The time to peremptorily challenge this judge passed over four years ago.

II.

THE PEREMPTORY CHALLENGE IS UNTIMELY

A. **Timing for a Peremptory Challenge in a Non-Coordinated Action is Different Than in a Coordinated Action**

A challenge under California Code of Civil Procedure §170.6 must be filed within 10 days after a party has appeared in the action (Code of Civil Procedure § 170.6). In addition, the challenge must be made prior to any hearing of any contested issues of law and fact. *Pacific/Southwest Annual Conference of the United Methodist Church v. Superior Court* (1978) 82 Cal.App3d 72, 79. Where the judge is known 10 days before the date of the trial or hearing,



1 the challenge must be made at least 5 days before that date.

2 Section 170.6(2) provides that, "in no event shall any judge entertain ... a motion [for  
3 peremptory challenge] ..." if it is made after commencement of trial. Since the parties who seek  
4 to challenge Judge Komar now have participated in two trials and numerous hearings, under the  
5 above criteria alone, the challenge is untimely.

6 **B. Special Rule in Cases Coordinated for Trial**

7 A peremptory challenge in coordinated actions is governed by California Rule of Court  
8 No. 3.516, which states, "A party making a peremptory challenge by motion or affidavit of  
9 prejudice regarding an assigned judge must submit it in writing to the assigned judge within 20  
10 days after service of the order assigning the judge to the coordination proceeding."

11 A Coordination Petition was filed on January 3, 2005. The case was ordered coordinated  
12 on June 17, 2005, and designated as Judicial Council Coordination Proceeding No. 4408. The  
13 Amended Order Assigning Coordination Trial Judge, assigning Judge Komar to sit as  
14 coordination trial judge, was signed by the Chief Justice of California and Chair of the Judicial  
15 Council on August 31, 2005 (*see* Exhibit "A", attached hereto). Counsel for Los Angeles County  
16 Waterworks District No. 40 filed a Notice of Entry of the Amended Order Assigning  
17 Coordination Trial Judge on September 2, 2005 (*see* Exhibit "B", attached hereto). Defendants  
18 failed to issue a peremptory challenge within the time permitted under the law.

19 *Industrial Indemnity Co. v. Superior Court* (1989) 214 Cal.App.3d 259, 263 applied and  
20 upheld the application of the requirement that peremptory challenges be made within twenty days  
21 after the coordinated judge is assigned. Whether defendants are the initial parties or add-on  
22 parties, their right to challenge Judge Komar is subject to Court Rule 3.516. Under this rule,  
23 defendants had twenty days to challenge Judge Komar. Defendants chose not to do so, and this  
24 challenge is untimely.

25 **C. This Peremptory Challenge Must be Denied Because the Judge has Presided**  
26 **at Earlier Proceedings Which Involved Determinations of Contested Factual**  
27 **Issues Relating to the Merits**

28 The case of *Swift v. Superior Court* (2009) 172 Cal.App.4th 878, holds that a Code of  
Civil Procedure §170.6 challenge must be denied if the judge has presided at an earlier hearing

1 which involved a determination of contested factual issues relating to the merits. The case states  
2 at page 883:

3 “At issue here is one of the limited exceptions to automatic  
4 disqualification. An otherwise timely peremptory challenge must  
5 be denied if the judge has presided at an earlier hearing which  
6 involved a determination of contested factual issues relating to the  
7 merits.” *Swift v. Superior Court* (2009) 172 Cal.App.4th 878,  
8 citing *Grant v. Superior Court* (2001) 90 Cal.App.4th 518-525.

9 In these coordinated actions, Judge Komar has presided over trials of significant factual  
10 issues. Phase I of trial determined the significant factual issue of the scope of the court’s  
11 jurisdiction, including the identity of landowners who needed to be included in the action. All of  
12 the parties who now challenge Judge Komar were represented at this trial. Phase II of trial  
13 included a factual determination of the characteristics of the basin, including a determination that  
14 water in the basin commingled throughout the basin.

15 Allowing a challenge after the judge has ruled on contested fact issues relating to the  
16 merits would make it possible for defendants to gamble on obtaining a favorable decision and  
17 then disqualify the judge if confronted with an adverse ruling. The policy against judge-shopping  
18 precludes such a result. *Stevens v. Superior Court* (2002) 96 CA4th 54, 60.

19 III.

20 ***NISSAN MOTOR CORPORATION v. SUPERIOR COURT***

21 **IS NOT APPLICABLE TO THIS ISSUE**

22 Defendants argue that *Nissan Motor Corporation In U.S.A. v. Superior Court* (1992)  
23 6 Cal.App.4th 150 allows them to exercise a peremptory challenge under Code of Civil  
24 Procedure § 170.6. However, *Nissan* was not a case that had been deemed coordinated pursuant  
25 to Code of Civil Procedure § 404, *et seq.*, and thus California Rule of Court No. 3.516 was not  
26 discussed. On this basis, *Nissan* is inapplicable to these coordinated actions.

27 *Nissan* is a case of three separate lawsuits in three courts before three separate judges.  
28 One of the judges ordered that all three actions be consolidated into his court. Some of the

1 litigants therefore never had the opportunity to challenge the judge that had ordered the cases be  
2 transferred to him. The appellate court ruled that as to the actions that were new to the  
3 challenged judge, the challenge was timely because it was made within ten days after the  
4 assignment of those cases.

5           Regardless of Rule 3.516, in *Nissan*, there was no dispute that the challenge in the  
6 consolidated actions was filed within ten days after notice of the assignment of those cases to the  
7 new judge. The appellate court's ruling in *Nissan* was thus compelled by the plain language of  
8 Code of Civil Procedure 170.6.

9           *Nissan* is distinguishable because in this case, all parties were before Judge Komar prior  
10 to consolidation, and the act of consolidation did not impose a new judge upon any of the  
11 defendants who now challenge Judge Komar. There is no dispute that defendants' challenge was  
12 filed more than twenty days after August 31, 2005, the date the actions were coordinated and  
13 assigned to Judge Komar. The plain language of California Rule of Court 3.516 compels the  
14 conclusion that the challenge is untimely by approximately four years.

15           V.

16           CONCLUSION

17           Defendants' motion has been brought several years too late. Judge Komar has already  
18 conducted two phases of trial and decided key factual issues applicable to the claims in each  
19 case. In addition, the timing of this motion is governed by Code of Civil Procedure § 170.6, and  
20 Rule 3.516, both of which specifically preclude a peremptory challenge by defendants.

21  
22 Dated: October 19, 2009

SmithTrager LLP

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24  
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26 By Susan M. Trager  
27 Susan M. Trager  
28 Attorneys for Defendant and Cross-  
Complainants Phelan Piñon Hills  
Community Services District

**EXHIBIT "A"**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/23/05

DEPT. 57

HONORABLE RALPH W. DAU

JUDGE M. NISALL

DEPUTY CLERK

HONORABLE  
13

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. INNIS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC325201

Plaintiff  
Counsel

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40  
VS  
DIAMOND FARMING COMPANY, A  
CORPORATION, ET AL.

[No Appearances]

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

**NON-APPEARANCE CASE REVIEW;**

The Amended Order Assigning Coordination Trial Judge in Judicial Council Coordination Proceeding No. 4408 was signed by the Chief Justice Of California and Chair of the Judicial Council on August 31, 2005.

The Honorable Jack Komar of the Superior Court of California, County of Santa Clara, has been assigned pursuant to Code of Civil Procedure Section 404.3 and Rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions and may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

Counsel for the Plaintiff shall give notice.

**CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on 09-26-05 I served Notice of Entry of the above Minute Order of 09-23-05 upon counsel named below by depositing in the United States Mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a sealed envelope and addressed as show below with the postage thereon fully prepaid.

MINUTES ENTERED 09/23/05 COUNTY CLERK
---

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 09/23/05

DEPT. 57

HONORABLE RALPH W. DAU

JUDGE

M. NISALL

DEPUTY CLERK

HONORABLE  
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. INNIS, C.A.

Deputy Sheriff

NONE

Reporter

8:30 am

BC325201

Plaintiff  
Counsel

LOS ANGELES COUNTY WATERWORKS  
DISTRICT NO. 40  
VS

[No Appearances]

DIAMOND FARMING COMPANY, A  
CORPORATION, ET AL.

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

Date: September 26, 2005

John A. Clarke, Executive Officer/Clerk

By: *M. Nisall*  
M. Nisall, Judicial Assistant/Clerk

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MINUTES ENTERED 09/23/05 COUNTY CLERK
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 COUNTY OF ORANGE

12 Coordination Proceeding

13 ANTELOPE VALLEY  
 14 GROUNDWATER CASES

15  
 16  
 17 Wm. Bolthouse Farms, Inc. v. City of  
 Lancaster  
 18 Diamond Farming Co. v. City of Lancaster  
 19 Diamond Farming Co. v. Palmdale Water  
 20 District  
 21 Los Angeles County Waterworks District  
 No. 40 v. Diamond Farming Co.  
 22 Los Angeles County Waterworks District  
 23 No. 40 v. Diamond Farming Co.

Judicial Council Coordination Proceeding No.  
 4408

Hon. David C. Velasquez, Dept. CX101

NOTICE OF ENTRY OF AMENDED  
 ORDER ASSIGNING COORDINATION  
 TRIAL JUDGE

Riverside County Superior Court  
 Lead Case No. RIC 344436  
 Case No. RIC 344668  
 Case No. RIC 353840

Los Angeles Superior Court  
 Case No. BC 325201

Kern County Superior Court  
 Case No. S-1500-CV-254348

Coordination Petition Filed: January 3, 2005

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NOTICE OF ENTRY OF AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE



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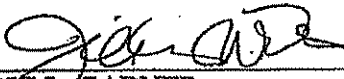
**NOTICE OF ENTRY OF ORDER**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NOTICE IS HEREBY GIVEN that, on August 31, 2005, the Chief Justice of California and Chair of the Judicial Council duly entered an Amended Order Assigning Coordination Trial Judge. A true and correct copy of the Court's order is attached hereto as Exhibit "A."

Dated: September 2, 2005

BEST BEST & KRIEGER LLP

By:   
ERIC L. GARNER  
JEFFREY V. DUNN  
JILL N. WILLIS  
Los Angeles County Waterworks District  
No. 40

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
3750 UNIVERSITY AVENUE  
P.O. BOX 1028  
RIVERSIDE, CALIFORNIA 92502

**CHAIR, JUDICIAL COUNCIL OF CALIFORNIA**  
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Coordination Proceeding  
Special Title (Rule 1550(b))

**ANTELOPE VALLEY  
GROUNDWATER CASES**

)  
)  
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)  
) **JUDICIAL COUNCIL**  
) **COORDINATION PROCEEDING**  
) **NO. 4408**  
)  
)

**AMENDED ORDER ASSIGNING  
COORDINATION TRIAL JUDGE**

The order heretofore made authorizing the Presiding Judge of the Superior Court of California, County of Los Angeles to assign this matter to a judge of the court to sit as coordination trial judge is hereby terminated.

**THE HONORABLE JACK KOMAR** of the Superior Court of California, County of Santa Clara, is hereby assigned pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

**COORDINATED ACTIONS**

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Los Angeles	BC 325 201	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.

<u>COURT</u>	<u>NUMBER</u>	<u>SHORT TITLE</u>
Superior Court of California County of Kern	S-1500-CV 254 348	Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.
Superior Court of California County of Riverside (Consolidated Actions)	(RIC 353 840	(Wm. Bolthouse Farms, Inc.
	(	( v. City of Lancaster
	(RIC 344 436	(Diamond Farming Co. v.
	(	( City of Lancaster
	(RIC 344 668	(Diamond Farming Co. v.
	(	( Palmdale Water District

The coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court with appellate and writ jurisdiction. (Code of Civ. Proc., §404.2; rule 1505(a)).

Pursuant to rules 1501(17) and 1540, every paper filed in a coordinated action must be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:


Hon. Jack Komar  
Judge of the Superior Court  
of California, County of Santa Clara  
191 North First Street  
San Jose, CA 95113

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council must be sent to the following address:

Chair, Judicial Council of California  
Administrative Office of the Courts  
Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordination)  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action, pursuant to rule 1540.

Dated: August 31, 2005



Chief Justice of California and  
Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: <b>4408</b>	CASE NUMBER:
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1. I am over the age of 18 and not a party to this legal action.
2. I am employed in the City and County of San Francisco and my business address is

455 Golden Gate Avenue  
San Francisco, CA 94102-3688

3. On August 31, 2005, I served a copy of the following documents:

- ORDER ASSIGNING COORDINATION MOTION JUDGE
- ORDER ASSIGNING COORDINATION TRIAL JUDGE
- ORDER ASSIGNING COORDINATION MOTION JUDGE AND SETTING DATE FOR HEARING
- AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
- AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
- OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

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

Date: August 31, 2005

  
Carlotta Tillman

**MAILING LIST**

**JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408**

Mr. Erick L. Garner  
Mr. Jeffrey V. Dunn  
Mr. Marc S. Ehrlich  
**BEST, BEST & KRIEGER, LLP**  
5 Park Plaza, Suite 1500  
Irvine, CA 92614

Raymond G. Fortner, Jr.  
County Counsel  
Frederick W. Pfaeffe  
Senior Deputy County Counsel  
**OFFICE OF COUNTY COUNSEL**  
**COUNTY OF LOS ANGELES**  
500 West Temple Street  
Los Angeles, CA 90012

LAW OFFICES OF  
BESTBEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

**PROOF OF SERVICE**

I, Lynda Serwy, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 3750 University Avenue, Riverside, California 92502. On September 2, 2005, I served the within document(s):

**NOTICE OF ENTRY OF AMENDED ORDER ASSIGNING  
COORDINATION TRIAL JUDGE**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Riverside, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

(SEE ATTACHED SERVICE LIST)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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.

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

Executed on September 2, 2005 at Riverside, California.

  
Lynda Serwy

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
5 PARK PLAZA, SUITE 1500  
IRVINE, CALIFORNIA 92614

SERVICE LIST

- 1
- 2 Robert H. Joyce, Esq. Attorneys for Diamond Farming  
LAW OFFICES OF LEBEAU THELEN, LLP Company  
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660 Newport Center Drive, Suite 1600  
8 Newport Beach, CA 92660-6522  
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- 10 James L. Markman, Esq. Attorneys for City of Palmdale  
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15 355 South Grand Avenue, 40<sup>th</sup> Floor  
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- 17 Michael Fife, Esq. Attorneys for Eugene B. Nebeker on  
18 HATCH AND PARENT behalf of Nebeker Ranch, Inc., Bob Jones  
21 East Carrillo Street on behalf of R&M Ranch, Inc., Forrest  
19 Santa Barbara, CA 93101-2782 G. Godde and Steve Godde, Gailen Kyle  
(805) 965-4333-Facsimile on behalf of Kyle & Kyle Ranch, Inc.  
20 mfife@hatchparent.com and John Calandri on behalf of  
karce@hatchparent.com Calandri/Sonrise Farms, collectively  
21 known as the Antelope Valley Ground  
Water Agreement Association  
22 ("AGWA")  
Attorneys for Bolthouse Properties, Inc.
- 23 Richard Zimmer, Esq.  
CLIFFORD & BROWN  
1430 Truxtun Avenue, Suite 900  
24 Bakersfield, CA 93301  
(661) 322-3508-Facsimile  
25 rzimmer@clifford-brownlaw.com
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2 Department of Water and Power Power  
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22 Thomas Bunn, Esq. Attorneys for Palmdale Water District  
23 LAGERLOF, SENECAL, BRADLEY, GOSNEY & and Quartz Hill Water District  
24 KRUSE  
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26 Pasadena, CA 91101-4108  
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38 Wm. Matthew Ditzhazy, Esq. Attorneys for City of Palmdale  
39 City Attorney  
40 CITY OF PALMDALE  
41 Legal Department  
42 38300 North Sierra Highway  
43 Palmdale, CA 93550  
44 (805) 267-5178-Facsimile  
45  
46 John Tootle, Esq. Attorneys for California Water Service.  
47 CALIFORNIA WATER SERVICE COMPANY Company  
48 3625 Del Amo Boulevard, Suite 350  
49 Torrance, CA 90503  
50 (310) 257-4654-Facsimile  
51 jtootle@calwater.com  
52

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PROOF OF SERVICE

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LAW OFFICES OF  
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2 IVERSON, YOAKUM, PAPIANO & HATCH  
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(213) 629-4562 Fax

4 Eduardo Angeles, Esq.  
5 Managing Assist. City Attorney  
6 Attention: James Spitsler, Esq.  
7 1 World Way  
8 Los Angeles, CA 90009  
(310) 646-9617

9 Christopher M. Sanders, Esq.  
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2015 H Street  
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13 Raymond G. Fortner, Jr.  
14 County Counsel  
15 Frederick W. Pfaeffle  
Senior Deputy County Counsel  
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17 County of Los Angeles  
18 500 West Temple Street  
Los Angeles, CA 90012

19 Chair, Judicial Council of California  
20 Administrative Office of the Court  
21 Attn: Appellate & Trial Court Judicial Services  
(Civil Case Coordination)  
22 455 Golden Gate Avenue  
San Francisco, California 94102

23 Hon. Ralph W. Dau – Dept. 57  
24 Los Angeles County Superior Court  
111 North Hill Street  
Los Angeles, CA 90012

25 Hon. Joan F. Burgess – Department 6  
26 Riverside Superior Court  
27 4050 Main Street  
28 Riverside, CA 92502-0431

City of Los Angeles, Department of  
Airports

City of Los Angeles – Airport

Attorneys for Los Angeles County  
Sanitation Districts

Hon. Jack Komar  
Judge of the Superior Court  
of California, County of Santa Clara  
191 North First Street  
San Jose, CA 95113

Hon. Louis P. Etcheverry  
Dept. 14  
Kern County Superior Court  
Metropolitan Division  
1215 Truxtun Avenue  
Bakersfield, CA 93301-4698

3 **PROOF OF SERVICE**

4 I, Robin Steele, declare:

5 I am employed in the County of Orange, State of California. I am over the age of 18 and  
6 am not a party to the within action; my business address is 19712 MacArthur Blvd., Suite 120,  
7 Irvine, California 92612.

8 On October 19, 2009, I served the foregoing documents(s) described as **Opposition to**  
9 **Peremptory Challenge (C.C.P. 170.6)**, as follows:

10 X **(ELECTRONIC SERVICE)** By posting the document(s) listed above to the Santa Clara  
11 County Superior Court website in regard to the Antelope Valley Groundwater matter  
12 pursuant to the Court's Clarification Order. Electronic service and electronic posting  
13 completed through www.scefilng.org.

14 \_\_\_\_\_ **(REGULAR MAIL)** By enclosing the document(s) listed in sealed envelope(s),  
15 addressing as shown below, and placing the envelope for collection and mailing  
16 following our ordinary business practices. I am readily familiar with this firm's practice  
17 for collection and processing correspondence for mailing. On the same day that  
18 correspondence is placed for collection and mailing, it is deposited in the ordinary course  
19 of business with the United States Postal Service in a sealed envelope with postage fully  
20 prepaid. I am aware that on motion of the party served, service is presumed invalid if  
21 postal cancellation date or postage meter date is more than one day after date of deposit  
22 for mailing in affidavit.

23 \_\_\_\_\_ **(FEDERAL EXPRESS)** By placing the document(s) listed above in a sealed overnight  
24 envelope, with delivery fees paid or provided for; addressed as shown below, and  
25 depositing it for overnight delivery at a facility regularly maintained by the express  
26 service carrier or delivered to a courier or driver authorized to receive documents on its  
27 behalf, for delivery on the next business day.

28 \_\_\_\_\_ **(FACSIMILE)** by transmitting the document(s) listed above via facsimile to the office of  
the addressee(s) shown below. A true and correct copy of the transmission report  
indicating transmission without error is attached hereto.

\_\_\_\_\_ **(PERSONAL SERVICE)** By delivering the document(s) listed above in a sealed  
envelope addressed to the parties as noted by hand to the offices of the addressee.

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

Executed this 19th day of October, 2009, in Irvine, California.

\_\_\_\_\_  
Robin Steele /s/