

BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101

1 MICHAEL T. FIFE (State Bar No. 203025)  
BRADLEY J. HERREMA (State Bar No. 228976)  
2 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
3 Santa Barbara, California 93101  
Telephone No: (805) 963-7000  
4 Facsimile No: (805) 965-4333

5 Attorneys for: B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri  
2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence  
6 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen  
Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family  
7 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula  
E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy  
8 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as  
Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas  
9 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E. Groven  
Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig, Paul S. &  
10 Sharon R. Kindig, Jose Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J. Siebert,  
Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White Fence  
11 Farms Mutual Water Co. No. 3., William R. Barnes & Eldora M. Barnes Family Trust of 1989, Del  
Sur Ranch, LLC, Healy Enterprises, Inc., John and Adrienne Reca, Sahara Nursery, Sal and Connie  
12 L. Cardile, Gene T. Bahlman, collectively known as the Antelope Valley Ground Water  
Agreement Association ("AGWA")

[See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF LOS ANGELES

18 ANTELOPE VALLEY )  
GROUNDWATER CASES )

Judicial Council Coordination Proceeding  
No. 4408

19 Included Actions: )

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

20 Los Angeles County Waterworks District No. )  
21 40 v. Diamond Farming Co. Superior Court of )  
California County of Los Angeles, Case No. BC )  
22 325 201 Los Angeles County Waterworks )  
District No. 40 v. Diamond Farming Co. )  
23 Superior Court of California, County of Kern, )  
Case No. S-1500-CV-254-348Wm. Bolthouse )  
24 Farms, Inc. v. City of Lancaster Diamond )  
Farming Co. v. City of Lancaster Diamond )  
25 Farming Co. v. Palmdale Water Dist. Superior )  
Court of California, County of Riverside, )  
26 consolidated actions, Case No. RIC 353 840, )  
RIC 344 436, RIC 344 668 )

OBJECTION TO PROPOSED ORDER  
TRANSFERRING AND CONSOLIDATING  
ACTIONS FOR ALL PURPOSES

Date: February 5, 2010  
Time: 9:00 AM  
Dept.: 1 [LASC]

28 OBJECTIONS TO PROPOSED CONSOLIDATION ORDER

1 EDGAR B. WASHBURN (State Bar No. 34038)  
WILLIAM M. SLOAN (State Bar No. 203583)  
2 GEOFFREY R. PITTMAN (State Bar No. 253876)  
MORRISON & FOERSTER LLP  
3 425 Market Street  
San Francisco, California 94105-2482  
4 Phone: (415) 268-7209 • Fax: (415) 276-7545  
Attorneys for U.S. BORAX INC.  
5

6 RICHARD G. ZIMMER (State Bar No. 107263)  
T. MARK SMITH (State Bar No. 162370)  
7 CLIFFORD & BROWN  
1430 Truxtun Avenue, Suite 900  
8 Bakersfield, California 93301-5230  
Phone: 661-322-6023 • Fax: 661-322-3508  
9 Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.  
10

11 BOB H. JOYCE (State Bar No. 84607)  
ANDREW SHEFFIELD (State Bar No. 220735)  
12 KEVIN E. THELEN (State Bar No. 252665)  
LAW OFFICES OF LEBEAU THELEN, LLP  
13 5001 East Commercenter Drive, Suite 300  
Post Office Box 12092  
14 Bakersfield, California 93389-2092  
Phone: 661-325-8962 • Fax: 661-325-1127  
15 Attorneys for DIAMOND FARMING COMPANY, a  
California corporation, CRYSTAL ORGANIC  
16 FARMS, a limited liability company, GRIMMWAY  
Enterprises, Inc., and LAPIS LAND COMPANY, LLC.  
17

18 MICHAEL DUANE DAVIS (State Bar No. 93678)  
MARLENE ALLEN-HAMMARLUND (State Bar No. 126418)  
19 BEN A. EILENBERG (State Bar No. 261288)  
GRESHAM SAVAGE NOLAN &  
20 TILDEN, A Professional Corporation  
3750 University Avenue, Suite 250  
21 Riverside, CA 9250 1-3335  
Phone: 951-684-2171 • Fax: 951-684-2150  
22 Attorneys for A.V. UNITED MUTUAL GROUP, SHEEP CREEK WATER COMPANY, and  
SERVICE ROCK PRODUCTS CORPORATION  
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1 Cross-Defendants Antelope Valley Groundwater Agreement Association (“AGWA”),  
2 Service Rock Products Corporation, Sheep Creek Water Company, the Antelope Valley United  
3 Mutual Group, U.S. Borax, Inc., Bolthouse Properties, Inc., Wm. Bolthouse Farms, Inc., Diamond  
4 Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company,  
5 LLC (collectively, “Cross-Defendants”) hereby object to the Proposed Order Transferring and  
6 Consolidating Actions for All Purposes (the “Proposed Order”) posted to the Court’s website by  
7 counsel for the City of Palmdale on January 25, 2010.

8 At the outset, Cross-Defendants reiterate that they are opposed to consolidation as they do  
9 not believe California law permits consolidation in this case. Cross-Defendants have previously  
10 articulated their opposition in their August 3, 2009 Opposition to Motion to Transfer and  
11 Consolidate for All Purposes and their September 18, 2009 Supplemental Opposition to Purveyors’  
12 Motion to Transfer and to Consolidate for All Purposes. However, as the Court has directed the  
13 parties to draft an order granting the motion to transfer and consolidate, the Cross-Defendants submit  
14 this objection.

15 Cross-Defendants object to the order as drafted on the grounds described below. Based on  
16 their objections, Cross-Defendants file herewith an alternative draft order.

- 17 • Initially, Cross-Defendants cannot properly consider any proposed consolidation  
18 order without having had the opportunity to review the proposed settlements between  
19 the landowner classes and various Public Water Suppliers. If the Court is intending  
20 to incorporate these settlements into a universal final judgment that satisfies the  
21 requirements of the McCarran Amendment, Cross-Defendants cannot properly  
22 evaluate the effect of a consolidation in the absence of information regarding the  
23 terms of the settlements.
  
- 24 • The Proposed Order does not contain language ensuring that consolidation will not  
25 result in Cross-Defendants assuming any obligation for the Classes’ attorneys’ fees  
26 and costs. The global consolidation suggested by the Proposed Order will make  
27

1 Cross-Defendants and the Classes parties to a common action. This consolidation is  
2 being accomplished primarily in order to satisfy the requirements of the McCarran  
3 Amendment and not as a result of any claims between the Classes and Cross-  
4 Defendants. Accordingly, consolidation should not impose upon Cross-Defendants  
5 any obligations for the Classes' fees and costs and any order of consolidation should  
6 explicitly provide the same.

- 7 • The Proposed Order is internally inconsistent. Paragraph 1 of the Order states that  
8 the motion to transfer and consolidate for all purposes is granted. Paragraph 2 of the  
9 Order provides that all actions, less the *Blum* action, are "consolidated completely for  
10 all purposes." Paragraph 4 of the findings states that complete consolidation will  
11 allow an *inter se* adjudication of the parties' rights to withdraw groundwater from the  
12 Antelope Valley Groundwater Basin. However, paragraph 5 of the findings provides  
13 that the Proposed Order  
14

15 shall not preclude any parties from settling any or all claims  
16 between or among them, as long as any such settlement  
17 expressly provides for the Court to retain jurisdiction over the  
18 settling parties for purposes of entering a physical solution  
19 resolving all claims to the rights to withdraw groundwater from  
20 the Antelope Valley Groundwater Basin. Upon appropriate  
21 motion and the opportunity for all parties in interest to be  
22 heard, the Court may enter a final judgment approving any  
23 settlements, including the *Willis* and *Wood* class settlements,  
24 that finally determine all cognizable claims for relief among  
25 the settling parties, but any such judgment must expressly  
26 retain jurisdiction over the settling parties for purposes of  
27 incorporating and merging the settlement into a comprehensive  
28 single judgment containing such a physical solution. Complete  
consolidation shall not prejudice or impair any class' right to  
seek the entry of a final judgment after settlement.

- 23 • These paragraphs are inconsistent, as, if the listed cases are consolidated for all  
24 purposes, there should be no settlement and separate judgment entered among a  
25 partial group of parties to the consolidated cases. Where complete consolidation may  
26 be ordered, the pleadings of the consolidated cases are regarded as merged, one set of  
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1 findings is made, and one judgment is rendered. (See *Hamilton v. Asbestos Corp.*,  
2 *Ltd.* (2000) 22 C4th 1127, 1147–1148, 95 CR2d 701, 714.) The potential settlement  
3 and separate judgment among a subgroup of the parties to the consolidated cases is  
4 inconsistent with “complete consolidation.”


5 A final judgment as contemplated by paragraph 5 would be just that, a “final  
6 judgment,” not susceptible to amendment, modification, and/or alteration of any  
7 rights and/or privileges gained and/or conceded therein. Any final judgment entered  
8 upon a stipulated settlement is and would be nothing more than the court’s  
9 endorsement of a contractual agreement between the settling parties, and would, in  
10 the context of a groundwater basin adjudication, be antithetical to what the law  
11 otherwise requires in an *inter se* adjudication.

- 12 • Paragraphs 5, 6 and 7 of the Proposed Order appear to have been drafted, in part, as a  
13 “pre-trial” order, to set the subject matter and sequencing of future phases of trial.  
14 However, this is outside the scope of the moving parties’ motion, presently premature  
15 and unnecessary for the purposes of the moving parties’ motion as presented and  
16 inappropriate without briefing and input from all the remaining parties to the actions  
17 to be consolidated. Specifically, Paragraph 6 contains inappropriate and  
18 impermissible findings of fact, on issues that were not even presented to the Court  
19 under the moving parties’ motion. These paragraphs are superfluous and should be  
20 stricken and removed from any consolidation order.

21 Based upon the foregoing, Cross-Defendants request that the Court adopt the alternative draft  
22 order attached hereto.

1 Dated: January 29, 2010

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

2  
3  
4 By:   
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for AGWA

5  
6  
7 Dated: January \_\_, 2010

**MORRISON & FOERSTER LLP**

8  
9  
10 By: \_\_\_\_\_  
EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
GEOFFREY R. PITTMAN  
Attorneys for U.S. BORAX, INC.

11  
12  
13 Dated: January \_\_, 2010

**CLIFFORD & BROWN**

14  
15  
16 By: \_\_\_\_\_  
RICHARD G. ZIMMER  
T. MARK SMITH  
Attorneys for BOLTHOUSE PROPERTIES  
LLC and WM. BOLTHOUSE FARMS, INC.

17  
18  
19 Dated: January \_\_, 2010

**LAW OFFICES OF LEBEAU THELEN, LLP**

20  
21  
22 By: \_\_\_\_\_  
BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN  
Attorneys for DIAMOND FARMING  
COMPANY, CRYSTAL ORGANIC FARMS,  
GRIMMWAY ENTERPRISES, INC., and  
LAPIS LAND COMPANY, LLC.

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SCHRECK, LLP**

By: \_\_\_\_\_  
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for AGWA

Dated: January 29, 2010

**MORRISON & FOERSTER LLP**

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

Dated: January \_\_, 2010

**CLIFFORD & BROWN**

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

Dated: January \_\_, 2010

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By: \_\_\_\_\_  
BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN  
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SCHRECK, LLP**

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MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for AGWA

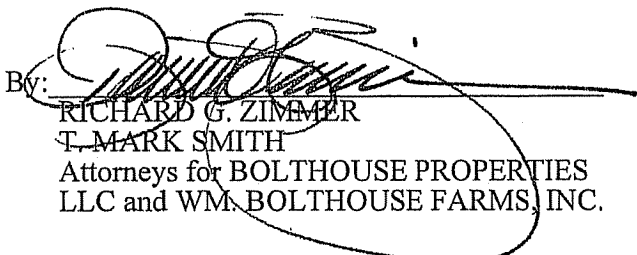
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**MORRISON & FOERSTER LLP**

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

Dated: January , 2010

**CLIFFORD & BROWN**

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

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



BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101

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**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

By: \_\_\_\_\_  
MICHAEL T. FIFE  
BRADLEY J. HERREMA  
Attorneys for AGWA

Dated: January \_\_, 2010

**MORRISON & FOERSTER LLP**

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

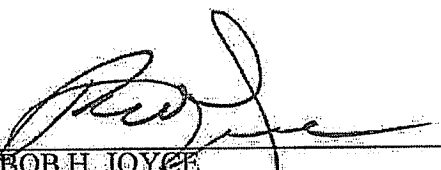
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**CLIFFORD & BROWN**

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

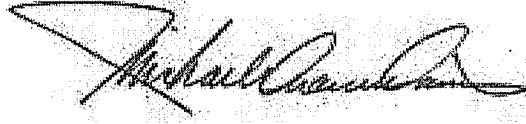
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KEVIN E. THELEN  
Attorneys for DIAMOND FARMING  
COMPANY, CRYSTAL ORGANIC FARMS,  
GRIMMWAY ENTERPRISES, INC., and  
LAPIS LAND COMPANY, LLC.

1 Dated: January 29, 2010

**GRESHAM SAVAGE NOLAN & TILDEN**

2 

3  
4  
5 By: \_\_\_\_\_

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

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA,  
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On February 1, 2010, I served the foregoing document described as:

**OBJECTION TO PROPOSED ORDER TRANSFERRING AND  
CONSOLIDATING ACTIONS FOR ALL PURPOSES**

on the interested parties in this action.

By posting it on the website at 11:00 a.m. on February 1, 2010.  
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on February 1, 2009.

**MARIA KLACHKO-BLAIR**  
**TYPE OR PRINT NAME**



**SIGNATURE**