

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

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

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

**Petitioners,**

**v.**

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

**Respondent.**

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

**Real Parties In Interest**

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**Appeal from the Judgment of the Superior Court**

**State of California, County of Los Angeles**

**The Honorable Jack Komar (Ret.)**

**Telephone No.: (408) 882-2286**

**Los Angeles County Superior Court Case No. JCCP 4408**

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

**\*\*\***

**EXHIBITS BOUND SEPARATELY**

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

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

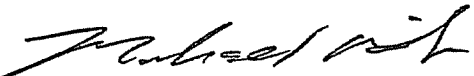
The undersigned, counsel for Petitioners, certify that Rio Tinto PLC has an ownership interest in Petitioner U.S. Borax Inc. that is subject to disclosure under the California Rules of Court. The undersigned, counsel for Petitioners, also certify that MCC Development Corporation has an ownership interest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

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

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

Dated: March 16, 2010

BROWNSTEIN HYATT FARBER SCHRECK,  
LLP

By:   
\_\_\_\_\_

MICHAEL T. FIFE

BRADLEY J. HERREMA

Attorneys for Petitioners

ANTELOPE VALLEY GROUND WATER

AGREEMENT ASSOCIATION

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

To the Honorable Manuel A. Ramirez, Presiding Justice of the Court of Appeal for the Fourth Appellate District, Division Two,<sup>1</sup> and to each of the Associate Justices of that Court, Petitioners, Antelope Valley Groundwater Agreement Association, Service Rock Products Corporation, Sheep Creek Water Company, the Antelope Valley United Mutual Group, U.S. Borax, Inc., Bolthouse Properties, Inc., Wm. Bolthouse Farms, Inc., Diamond Farming Company, Crystal Organic Farms, Grimmway Enterprises, Inc., and Lapis Land Company, LLC, comprising over 63 parties, respectfully request that this Court grant this Petition for Writ of Mandate (Code Civ. Proc., § 1085) for judicial disqualification of the Honorable Jack Komar in this matter pursuant to Code of Civil Procedure section 170.6.

## **II. ISSUES PRESENTED**

In this complicated litigation, Respondent Court recently formally consolidated for all purposes two separate complex plaintiff class actions into a third lawsuit that the Petitioners are currently defending. This consolidation has created a dramatic change of circumstances. When Respondent Court stated that it was consolidating these cases in October

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<sup>1</sup> Pursuant to Code of Civil Procedure section 404.2 and Cal. Rules of Ct. Rule 3.505(a), the coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division Two as the reviewing court with appellate and writ jurisdiction. (Appx., Exh. 1 at 41.)

2009, Petitioners exercised a Code of Civil Procedure section 170.6 Peremptory Challenge as to Judge Komar presiding over the consolidated cases, as is their right upon consolidation. (See, e.g. this Court of Appeal's decision in *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 154-55.)

Respondent Court denied this challenge, stating that Petitioners' challenge was premature, as the court had not yet issued a final written order of consolidation. (Appx., Exh. 24 at 8:11-14.) Upon Petitioners' November 6, 2009 Petition for Writ of Mandate and Request for Temporary Stay of Proceedings, this Court found that Respondent Court had intended that a detailed written order of consolidation would be prepared, and that Petitioners' October challenge was therefore premature. (Appx., Exh. 26.)

On February 19, 2010, Respondent Court issued its written final Order Transferring and Consolidating Actions for All Purposes. (Appx., Exh. 27.) Later that same morning, Petitioners filed a 170.6 Peremptory Challenge to Assigned Judge (the "Peremptory Challenge"). (Appx., Exh. 28.) Following a hearing on March 8, 2010, Judge Komar denied Petitioners' Peremptory Challenge and has failed to disqualify himself. Whereas Respondent Court prior to a formal written order of consolidation order found Petitioners' 170.6 Challenge to be premature, now that Respondent Court has issued such a order, Respondent Court finds that Petitioners' 170.6 Challenge is too late. (Appx., Exh. 35, at 4:7-14, 5:23-

24.) Petitioners are now forced to seek extraordinary relief.

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

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

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

Code of Civil Procedure section 170.3(d) declares that "the determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." The petition for the writ must be filed and served within ten (10) days after service of written notice of entry of the court's order determining the question of disqualification. (Code of Civ. Pro., § 170.3(d).) Accordingly, a writ of mandate here is proper and the only form of relief available to Petitioners.

Pursuant to Code of Civil Procedure section 404.2 and Cal. Rules of Ct. Rule 3.505(a), the coordination motion judge has designated the Court of Appeal, Fourth Appellate District, Division two as the reviewing court

with appellate and writ jurisdiction. (Appx., Exh. 1, at 41.)

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

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

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

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

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

*No. 40 v. Diamond Farming Co.*, Superior Court of California, County of Kern, Case No. S-1500-CV-254-348; and *Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster, Diamond Farming Co. v. Palmdale Water Dist.*, Superior Court of California, County of Riverside, consolidated actions, Case No. RIC 353 840, RIC 344 436, RIC 344 668. (Appx., Exh. 1 at 40-41.)

3. These actions were coordinated by the Judicial Council on June 17, 2005. On July 11, 2005 the Judicial Council, acting through the Chief Justice, ordered those coordinated proceedings to be venued in the Los Angeles County Superior Court. (Appx., Exh. 1, at 41.)

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

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

6. Following coordination and assignment, numerous other

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

7. On July 15, 2009, a group of water purveyors filed the *Motion to Transfer and Consolidate for All Purposes*, requesting the transfer of all actions pending in the Riverside County and Kern County Superior Courts to the Los Angeles County Superior Court, and a consolidation of all of the transferred and coordinated cases. (Appx., Exh. 8.)

8. On October 13, 2009, the Court held a hearing to consider, among other things, the *Motion to Transfer and Consolidate for All Purposes*. At that hearing the Court indicated that it was granting the motion, though the exact form of the order and the exact details of consolidation were not at that time clear to the Court. (Appx., Exh. 10 at 38:21 – 39:2.)

9. At the October 13, 2009 hearing, the Court also discussed the

intended effect of its granting the *Motion to Transfer and Consolidate for All Purposes*, not only for trial, but for all purposes:

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

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

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

11. Respondent Court held the hearing on Petitioners' October Challenge on October 27, 2009 and issued a written order to "strike" the October Challenge on October 28, 2009. (Appx., Exh. 24; Appx., Exh. 25 at 2.)

12. On November 6, 2009, Petitioners filed with this Court a *Petition for Writ of Mandate and Request for Temporary Stay of Proceedings* (the "November Petition").

13. On November 19, 2009, this Court issued its Order, denying the November Petition, stating that the October Challenge was premature, finding that the Respondent Court had intended that a detailed written order of consolidation would be prepared and, as a trial court is free to change its order until the order is signed, Petitioners' October Challenge "related to an action to which they are not yet parties and was premature." (Appx., Exh. 26.)

14. On February 5, 2010, the Respondent Court held a hearing on the form of an order of consolidation.

15. On February 19, 2010, Respondent Court issued a final written order transferring and consolidating actions for all purposes by posting the order to the Court's website. (Appx., Exh. 27.)

16. On February 19, 2010, Petitioners filed a *Peremptory Challenge to Assigned Judge*. (Appx., Exh. 28.)

17. After the Petitioners' filing of their Peremptory Challenge, on the afternoon of February 19, 2010, Respondent Court issued a Minute Order setting a hearing on the Peremptory Challenge for March 8, 2010. (Appx., Exh. 29.)

18. On February 26, 2010, a group of water purveyors filed their *Public Water Suppliers' Opposition to Code of Civil Procedure Section 170.6 Peremptory Challenge*, which was joined by the City of Los Angeles, the Phelan Piñon Hills Community Services District, and the State of



California. (Appx., Exh. 30.) On that same date, Federal Defendants filed their *Federal Defendants' Response to Peremptory Challenge to Assigned Judge (CCP § 170.6)*. (Appx., Exh. 31.)

19. On March 4, 2010, Petitioners filed their *Cross-Defendants' Reply to Oppositions to Peremptory Challenge to Assigned Judge*. (Appx., Exh. 33.)

20. At the March 8, 2010 hearing, Respondent Court denied Petitioners' Peremptory Challenge. (Appx., Exh. 34 at 5:8-10; Appx., Exh. 35 at 5:23-24.)

21. At the March 8, 2010 hearing, immediately after denying the Peremptory Challenge, Respondent Court held a Case Management Conference in which he issued bench orders as to an Order of Publication of Summons and a Motion for Expert Fees, set a date for a hearing on a Motion for Withdrawal, and scheduled the date for the commencement of the next phase of trial and set attendant deadlines regarding expert disclosure and expert depositions. (Appx., Exh. 34, at 11:16-17, 5:18-22, 67:7-19.) Additionally, the Court set a further Case Management Conference for March 22, 2010 to discuss proposals for further Case Management Orders. (Appx., Exh. 34, at 57:18-24.)

22. On March 9, 2010, Respondent Court issued its Order Denying the Challenging Parties' Peremptory Challenge Pursuant to CCP § 170.6. (Appx., Exh. 35.) Respondent Court based its denial on its

determination that “the timing of challenges pursuant to Code of Civil Procedure Section 170.6 in this case is governed by California Rule of Court 3.516.” (Appx., Exh. 35 at 4:11-14.)

23. Between the time of the filing of Petitioners’ Peremptory Challenge and Respondent Court’s ruling on the Peremptory Challenge, Respondent Court issued orders regarding late additions to the Classes. (Appx., Exh. 32.)

24. On March 10, 2010, Respondent Court issued its Order and Notice to All Counsel Regarding Phase 3 Trial on Status of Aquifer and Issue of Overdraft, scheduling a Phase 3 Trial on the status of the Basin and the issue of overdraft. The Court additionally set a further Case Management Conference for March 22, 2010 to discuss proposals for further Case Management Orders. (Appx., Exh. 36.)

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

26. Upon consolidation, Petitioners have the right to exercise a Peremptory Challenge under Code of Civil Procedure section 170.6. A party to any of the consolidated cases may disqualify the assigned judge by

a timely challenge under Code of Civil Procedure section 170.6, even where that party previously acquiesced to the judge in one of the consolidated cases. (*Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 155; *Philip Morris Inc. v. Superior Court* (1999) 71 Cal.App.4th 116, 123.)

27. The ability of a party to exercise a peremptory challenge upon the consolidation of cases is based on the recognition that consolidation alters the nature of the actions, essentially creating a new case. Consolidation of the diverse actions involved in Judicial Council Coordination Proceeding 4408, especially though not exclusively with reference to the two class actions, changes the alignment of the parties so fundamentally that the cases cannot be considered continuous. As described above, the Court granted consolidation *for all purposes*, meaning that there would be a single judgment as to all parties, and that the parties became parties to cases – such as the Willis and Wood Class Actions – to which they were not previously parties.

28. Once it is properly exercised, a party's peremptory challenge terminates the judge's authority to act in any manner in the case, other than to transfer the case to another judge. (*In re Jenkins* (2d Dist. 1999) 70 Cal.App.4th 1162.) The challenged trial court judge has jurisdiction solely to inquire into the timeliness of the challenge or its technical sufficiency under the statute. (*Andrews v. Joint Clerks, etc., Committee* (1966) 239

Cal.App.2d 285, 293-99 [Upholding court's power to inquire as to timeliness]; *Lewis v. Linn* (1962) 209 Cal.App.2d 394, 399-400 [Upholding court's power to inquire into technical sufficiency].) Review of Petitioners' Peremptory Challenge is thus limited to its timeliness and technical sufficiency. If a peremptory challenge is timely and in proper form, immediate disqualification is mandatory. (*Grant v. Superior Court* (6th Dist. 2001) 90 Cal.App.4th 518; *Barrett v. Superior Court* (3d Dist. 1999) 77 Cal.App.4th 1.) As long as the Peremptory Challenge is timely filed, a judge has no discretion to reject it, inquire about the party's motives, or require a showing of prejudice. (*Id.*; see also *Davcon, Inc. v. Roberts & Morgan* (2003) 110 Cal.App.4th 1355, 1359-60; *Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, 1251-53.)

29. Petitioners' Peremptory Challenge was timely and in proper form, and thus Petitioners have a clear right to disqualify Judge Komar. A Peremptory Challenge is timely if made "...within 10 days after notice of the all purpose assignment," and applies upon consolidation. (Code of Civil Procedure, § 170.6 (a)(2); *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150, 154-55.) In this case, Petitioners filed their Peremptory Challenge within hours after Judge Komar issued a final written Order of Consolidation on February 19, 2010. It is thus timely. The substantial form of the Peremptory Challenge is set forth at Code of Civil Procedure Section 170.6(a)(5), which Petitioners followed. Neither

Respondent Court nor opposing parties have questioned the technical sufficiency of Petitioner's Peremptory Challenge.

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

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

A stay of further proceedings in Respondent Court is necessary to preserve the status quo and thereby provide this Court with sufficient time to consider this petition. As explained above, since the time that the Peremptory Challenge was filed, the Court has continued to issue orders unrelated to the Peremptory Challenge including the setting of this matter for its next phase of trial. This Court should preserve the status quo by ordering a stay of further proceedings in Respondent Court pending the final resolution of this petition concerning disqualification of Judge Komar.

#### **VII. PRAYER**

WHEREFORE, Petitioner respectfully prays as follows:

1. The Court, under its seal, issue an alternative writ of mandate directing Respondent Court to set aside and vacate its order denying Petitioners' Peremptory Challenge under Code of Civil Procedure section 170.6 (or to show cause why it should not be ordered to do so), and upon return of the alternative writ, issue a peremptory writ of mandate or such

other extraordinary relief as is warranted, directing Respondent Court to set aside and vacate its order denying Petitioners' Peremptory Challenge, and directing Judge Komar to immediately disqualify himself from the consolidated Judicial Council Coordination Proceeding No. 4408 and transfer the case for reassignment to another judge.

2. This Court order and/or permit further briefing as necessary, to allow for a full resolution of these issues;

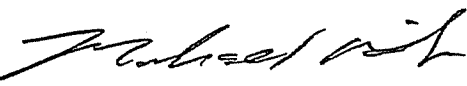
3. This Court grant a temporary stay of the proceedings in this case, such stay to remain in force until the outcome of this petition is finalized or Judge Komar concedes that he has no further jurisdiction to hear proceedings in the consolidated cases and removes himself; and

4. This Court grant such other relief as may be just and proper.

Respectfully submitted,

Dated: March 16, 2010

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

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

VERIFICATION

State of California, County of Santa Barbara:

I, the undersigned, being sworn, say:

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

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

DATED: March 16, 2010

By:   
\_\_\_\_\_  
MICHAEL T. FIFE

DATED: March 16, 2010

Respectfully submitted,

MORRISON & FOERSTER LLP

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

VERIFICATION

State of California, County of San Francisco

I, the undersigned, say:

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

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

DATED: March 16, 2010

By: William M Sloan  
WILLIAM M. SLOAN



DATED: March 10<sup>th</sup>, 2010

Respectfully submitted,

CLIFFORD & BROWN

By: 

RICHARD G. ZIMMER  
T. MARK SMITH

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

VERIFICATION


State of California, County of Kern :

I, the undersigned, being sworn, say:

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

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

DATED: March 10<sup>th</sup>, 2010

By: 

RICHARD G. ZIMMER

DATED: March 16 2010

Respectfully submitted,

LAW OFFICES OF LEBEAU THELEN, LLP

By:  \_\_\_\_\_

BOB H. JOYCE  
ANDREW SHEFFIELD  
KEVIN E. THELEN

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

VERIFICATION

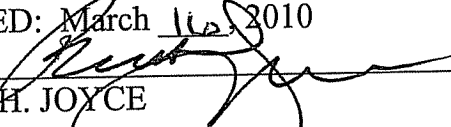
State of California, County of Kern:

I, the undersigned, being sworn, say:

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

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

DATED: March 16 2010

By:  \_\_\_\_\_

BOB H. JOYCE

Respectfully submitted,

DATED: March 16, 2010

GRESHAM SAVAGE NOLAN &  
TILDEN, A PROFESSIONAL  
CORPORATION

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

**VERIFICATION**

State of California, County of Riverside

I, the undersigned, say:

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

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

DATED: March 16, 2010

By: *M. Allen*  
MARLENE L. ALLEN-HAMMARLUND

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

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

**I. INTRODUCTION**

This Petition seeks to enforce Petitioners' right to disqualify a judge under Code of Civil Procedure section 170.6 ("Peremptory Challenge") following consolidation of separate cases. Petitioners previously attempted to exercise their rights to challenge Judge Komar upon consolidation, but were told that such a challenge was premature without a signed Order of Consolidation. Judge Komar has now issued a signed Order of Consolidation, rendering Petitioners' Peremptory Challenge now timely.

The determinative law in this case is *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal.App.4th 150 (*Nissan*). The Fourth Appellate District court in *Nissan* held that where separate cases are consolidated, the parties to each of the consolidated cases retain the right to timely challenge the judge assigned to the cases. If there is any question at issue in the present case, it can only be whether *Nissan* applies to the consolidation of previously coordinated cases. Petitioners argue that it does. Notwithstanding their prior coordination, the cases involved here differ significantly from one another, both in terms of the nature of the issues and the parties involved, and in the relative development of the cases, including

the nature and extent of pretrial rulings. The significant difference between coordination and consolidation of the cases at issue here has been obvious from the very beginning when the Orange County Superior Court specifically elected to coordinate rather than consolidate the cases. Consolidation of these previously coordinated cases will change the alignment of the parties and result in a significantly different case than previously existed. That consolidation fundamentally changes the situation of the previously coordinated cases is clear from the fact that the federal government would not agree to continue its participation in the cases without consolidation.

When Respondent Court consolidated the separate cases involved here, a right to exercise a section 170.6 or peremptory challenge arose for Petitioners. Because Petitioners filed their Peremptory Challenge within hours of the Court's issuance of its Order of Consolidation and in conformity with the form set forth in section 170.6(a)(5), Petitioners' Peremptory Challenge was timely and proper, and the consolidated cases should be assigned to a new judge.

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

Appellate Courts review a decision granting or denying a Peremptory Challenge to a judge as an error of law reviewable under the non-deferential de novo standard. (*Ziesmer v. Superior Court* (2d Dist.

2003) 107 Cal. App. 4th 360, 363, as modified on denial of reh'g, (Apr. 22, 2003).) In the absence of conflicting evidence, the reviewing court must make an independent determination of the issue. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866.) There is no conflicting evidence in the instant action, as there is no dispute that Petitioners filed their Peremptory Challenge within hours of Judge Komar's February 19, 2010 Order of Consolidation. The question of disqualification of Judge Komar is thus purely a matter of law to be reviewed de novo. (*Ziesmer*, 107 Cal.App.4th at 363.)

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

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

Once it is properly exercised, a party's Peremptory Challenge terminates all of the judge's authority to act in any manner in the case, other than to transfer the case to another judge. (*In re Jenkins* (2d Dist. 1999) 70 Cal. App. 4th 1162, 1165-66). The challenged trial court judge

has jurisdiction solely to “inquire into the timeliness of the affidavit or its technical sufficiency under the statute.” (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 531-32 (citing to *Andrews v. Joint Clerks, etc., Committee* (1966) 239 Cal.App.2d 285, 293-299 (upholding court's power to inquire as to timeliness), and *Lewis v. Linn* (1962) 209 Cal.App.2d 394, 399-400 (upholding court's power to inquire into technical sufficiency of the affidavit), overruled on another point in *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 799, fn. 18.)

Therefore, at the March 8, 2010 hearing on the Peremptory Challenge, (Appx., Exh. 34), Judge Komar’s jurisdiction extended only to the determination of whether Petitioners timely filed their Peremptory Challenge upon consolidation, and whether it was in proper form.

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

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

A Peremptory Challenge is timely if made “... within 10 days after notice of the all purpose assignment,” and applies upon consolidation. (Code of Civil Procedure, section 170.6(a)(2); *Nissan Motor Corp. v. Superior Court* (1992) 6 Cal. App. 4th 150, 154-55.) The substantial form of the Peremptory Challenge is set forth at Code of Civil Procedure, section

170.6(a)(5). In this case, on the same day as the Court's issuance of its Order of Consolidation, Petitioners filed their Peremptory Challenge (Appx., Exh. 28), which contained their good-faith assertion that Judge Komar is prejudiced against Petitioners, or the interests of Petitioners, such that in the newly consolidated action Petitioners cannot have a fair or impartial trial or hearing before him. (Appx., Exh. 28 at 4:1-3.) Petitioners' filing of their Peremptory Challenge within hours of Respondent Court's issuance of its Order of Consolidation is certainly within such period and the Peremptory Challenge is fully in compliance with the substantial form set forth in Code of Civil Procedure section 170.6(a)(5).

**B. Consolidation Provides an Independent Right to a Peremptory Challenge**

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



upon consolidation.

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

In this case, just as the defendant did in *Nissan*, Petitioners properly moved to disqualify Respondent Court pursuant to section 170.6. (Appx., Exh. 28.) In *Nissan*, the party exercising the peremptory challenge was a party to all three consolidated cases and had therefore previously been afforded an opportunity to exercise a peremptory challenge to any of the judges in any of the three cases. In the Antelope Valley Groundwater cases here, Petitioners were never parties to the two class action cases and thus never had the opportunity to exercise a peremptory challenge in those cases.

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

forth in *Nissan*.

That Petitioners had not challenged Judge Komar's assignment in any prior action does not render the Peremptory Challenge untimely or otherwise improper for purposes of the newly consolidated cases. Consolidation provides a second chance at exercising the statutory right to challenge a judge based on the allegation of bias. (WEIL & BROWN, CIVIL PROCEDURE BEFORE TRIAL, § 12:369 (2009) (citing to *Nissan*.) Furthermore, as stated in *Nissan*, Code of Civil Procedure section 170.6 "should be liberally construed with a view to effect its objects and to promote justice." (*Nissan*, 6 Cal.App.4th at 154, quoting *Eagle Maintenance & Supply Co. v. Superior Court* (1961) 196 Cal.App.2d 692, 695.) Petitioners should not be deprived of their guaranteed right to exercise a Peremptory Challenge in the consolidated cases. "Assigning the same judge to hear a series of complex actions, such as these where there exists subject matter overlap, may promote judicial efficiency. However, judicial efficiency is not to be fostered at the expense of a litigant's rights under section 170.6 to peremptorily challenge a judge."<sup>2</sup> (*Nissan*, 6

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<sup>2</sup> That parties who had not challenged a judge in a previous proceeding do not waive their right to do so in a later related proceeding is not a principle limited to the Fourth Appellate District. *In Farmers Insurance Exchange v. Superior Court of Contra Costa County* (1992) 10 Cal.App.4th 1509, which dealt with a peremptory challenge upon coordination, three civil actions were consolidated and then another action pending in another county was coordinated with them. The defendant filed a timely peremptory challenge to the coordination judge, who had already ruled on contested matters in the

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

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

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

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three consolidated cases. The court held that the challenge was not untimely, even though the judge had previously ruled on contested matters in the consolidated cases. Similar to the case in *Nissan* and the case at bar, the party filing the Peremptory Challenge was the common party to all the cases that were consolidated, including the one over which the judge assigned to the consolidated cases had already been presiding. Even where the challenged judge had previously ruled on contested motions, including a motion for summary adjudication and a motion for class certification, the *Farmers* Court upheld the timeliness of defendant's challenge. (*Farmers*, 10 Cal.App.4th at 1512.)

Consolidation is not merely an extension of prior coordination; the differences between coordination and consolidation are fundamental. Coordinated actions will result in separate judgments, which lend themselves to separate enforcement. Consolidation unifies the actions, such that a single judgment can be issued – as the Court stated in its Order of Consolidation. (Appx., Exh. 27 at 3:1-19, 4:7-9.) If consolidation does not alter the nature of the case and realign the parties, then the purpose of the consolidation is unclear.

It is clear that the prior coordination of cases in these proceedings did not and was not intended to have the same effect as the Court's Order of consolidation. At the time of coordination, Judge Vasquez of the Orange County Superior Court both knew and acknowledged the difference between coordination and consolidation. Judge Vasquez commented at the time that coordination was ordered:

Let me start by saying what I am not going to be ordering today. The issue that was in the mind of many of the parties was whether or not the case should proceed on an individual basis or a basin-wide adjudication. That would not be what the court is going to be addressing today.

Whether or not the matter should proceed as individual quiet title actions or basin wide would be up to the judge who gets the case to decide, but I am still inclined to order coordination to have all those issues resolved, except with the tiny carve out for Diamond Farming on the trial that was aborted to make

its motion for fees and costs in the Riverside Superior Court, so that trial judge has the best handle on addressing that issue. But for all other purposes the matters will be coordinated.

(Appx., Exh. 1 at 2-3.) Judge Vasquez recognized that consolidation of the cases before him would initiate a fundamentally different process – “a basin-wide adjudication” – than would coordination. For this reason he left this important next step to the discretion of the coordination judge. This step has now been taken and this transformation of the previously separate actions has occurred.

Respondent Court attempts to downplay the effect of consolidation in its *Order Denying the Challenging Parties’ Peremptory Challenge Pursuant to CCP § 170.6* (Appx., Exh. 35 at 3:18-20 [“The Court’s Order considering consolidation does nothing more than provide some assurance that the ultimate determination that is the product of all parties participating in the adjudication will be binding on all parties”]), but the fact that such consolidation was conducted demonstrates that it must have accomplished something previously lacking in the cases proceeding solely in a coordinated manner. Moreover, as mentioned above, that consolidation so fundamentally alters these proceedings is shown by the Federal Defendants’ indication that they would not continue to participate absent consolidation. (See Appx., Exh. 7 at 2:19-3:18; Appx., Exh. 9 at 1:12-14, 3:1-3 [“The limitation of coordination as a means to achieve a mutually

binding adjudication of all of the correlative rights is illustrated by the problems inherent in enforcement of the separate decrees.”].)

In fact, the Federal Defendants argued that the cases could not proceed merely in a coordinated fashion and that consolidation was imperative to resolution of this case, because the “coordination of complex cases may lead to separate and non-mutually binding determinations of rights and interests entered in separate decrees.” (Appx., Exh. 9 at 1:12-14.) The Federal Defendants have further described how consolidation unifies the cases resulting in different postures amongst the parties:

[...] coordination that leads to separate and non-mutually binding determinations of rights and interests entered into separate decrees has the potential to produce only piecemeal adjudication of limited rights that are neither binding on all users or enforceable by all users....Consequently, this adjudication...must be unified in a single or consolidated proceeding.

(Appx., Exh. 7 at 2:19-25.)

Here, as a result of consolidation, Petitioners are now parties to the Willis and Wood Class Actions, and are subject to the separate causes of action asserted therein, as well as to the unique defenses that the Classes possess. In addition, as classes, these new parties have a unique relationship to the Court which has not previously existed with respect to any of the parties in the cases to which Petitioners were party. The complex set of procedural issues to which Petitioners are now subject is, in

fact, unprecedented. As stated by one of the class counsel at the October 13, 2009 hearing where consolidation was first ordered: “If there was a case out there in which class action was consolidated into another civil litigation I was not able to find it.” (Appx., Exh. 10 at 17:13-15.)

*Nissan* controls in this case, and as the Court there explained, consolidation fundamentally changes the nature of the action, affording a new right to peremptory challenge:

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

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

**D. The Consolidated Case and the Previous Cases to Which Petitioners were Party are Not Continuous**

The ability of a party to exercise a section 170.6 peremptory challenge upon the consolidation of cases is based on the recognition that consolidation fundamentally alters the nature of the actions, essentially creating a new case. Consolidation of the diverse actions involved in Judicial Council Coordination Proceeding 4408, especially, though not exclusively, with reference to the two class actions, changes the alignment of the parties so fundamentally that the cases cannot be considered continuous.

A specific example of the way in which consolidation will fundamentally change the nature of this case can be seen in the sequence of class certification and the Phase I and II trials. As a matter of due process, neither the Willis Class members nor the Wood Class members can be bound by the Court's rulings in Phases I and II, as notices of the class proceedings had not yet been disseminated. (Appx., Exh. 4 at 2:1-3, 2:26-3:7.) The law is clear that prior to class notice, class members cannot be bound by a determination on the merits; the defendants only gain the res judicata benefits of class certification after notice has been disseminated. (*Civil Service Employees Ins. Co. v. Superior Court* (1978) 22 Cal.3d 362, 372-74.) In effect, the Classes have a right of "automatic reversal" as to any of Respondent Court's future rulings that are predicated on Respondent Court's findings in Phases I and II of the trial, which took place prior to the dissemination of class notice. This gives the classes an enormous procedural leverage point that is not enjoyed by anyone who is a party to the other actions consolidated with the class actions. This will make Petitioners, as well as the rest of the parties and the Respondent Court, beholden to the classes unless the parties are willing to take the risk that the many years of litigation will be rendered moot and returned to the beginning.

Another way in which the newly consolidated case differs from the previously coordinated cases concerns the issue of costs and fees. Under



the California Code of Civil Procedure section 1021.5, class counsel for the Wood Class and the Willis Class have a right to recover their costs including attorney fees from “opposing” parties. This right to recover attorney fees is an extraordinary right that was not present in the prior cases to which Petitioners were parties. Both classes have legal claims that will be adverse to the interests of Petitioners, but due to the risk that Petitioners will become “opposing parties” to the classes, and therefore potentially liable for their attorney fees, Petitioners will be inhibited from asserting those claims. The purveyor parties have already indicated that they will assert that Petitioners should share in this financial liability.<sup>3</sup> Thus, in the newly consolidated cases, Petitioner’s water rights are to be adjudicated vis-à-vis competing parties against whom Petitioner’s cannot afford from a financial perspective to be adverse.

The *Nissan* Court touched briefly on the differences in the cases to be consolidated for the purpose of dismissing the characterization of the

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<sup>3</sup> At the March 8, 2010 hearing on the Peremptory Challenge, counsel for Palmdale Water District stated:

We will – the Public Water Suppliers will talk with the Wood Class about the costs incurred to date. In terms of the future costs....It has always been our position that these costs, if incurred, should be apportioned to all the parties in the case or at least all the significant parties in the case.

(Appx., Exh. 34 at 17:25-18:5.)

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

Similarly here, the Willis and Wood Class Actions to be consolidated into the main action cannot be considered “continuations” of the main action. Counsel for one of the landowner classes in the *Wood* case stressed this point at the March 8, 2010 hearing, saying that the Wood Class had sought only a declaration of rights vis-à-vis the defendants to the Class’ complaint, but that consolidation now made the class adverse to parties the Class had not sued.<sup>5</sup> By virtue of the structure of the cases as plaintiff class

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

<sup>5</sup> This was acknowledged by Counsel for the Wood class at the March 8, 2010 hearing on the Peremptory Challenge:

Mr. McLachlan: I agree with the landowners over here that things have changed. Notice was given to the small pumpers class and to the Willis class about a particular lawsuit against Public Water Suppliers. And now their declaratory relief claims have been ostensibly and actually consolidated with the declaratory relief claims of everybody else[...]

actions and the timing of creation of the classes, the relationship between plaintiffs and defendants is significantly different than the relationship between plaintiffs and defendants in the main action, both substantively and procedurally.

**E. Rule 3.516 Does Not Control**

California Rule of Court Rule 3.516 (formerly Rule 1515) does not control in this case, as it deals with the ability of a party to complex coordination proceedings to exercise a section 170.6 preemptory challenge to the judge assigned to those coordinated proceedings within 20 days of the order of assignment of the judge to the coordination proceeding. (Cal. Rules of Ct. Rule 3.516.) The Rule does not control in this case because, pursuant to *Nissan*, Petitioners have exercised their rights to a section 170.6 challenge upon *consolidation* and not upon coordination.

Respondent Court, as well as those parties to the coordinated cases

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The Court: [...]I think I recollect the pleading. And in that pleading, you want the Court to declare what your rights are vis-à-vis anyone else that may have a claim to water that your clients have a right to—

Mr. McLachlan: No, that's not true. I want a declaration of the rights relative to the—of the Public Water Suppliers and prescription claims. We didn't seek a physical solution. We didn't seek a basin-wide adjudication. We didn't sue the United States. I didn't sue Bolthouse.

(Appx., Exh. 34 at 60:23-62:5.)

that challenged Petitioners' Peremptory Challenge, finds that *Industrial Indemnity Co. v. Superior Court* (1989) 214 Cal.App.3d 259, "resonates" here. (Appx., Exh. 35 at 4:15-16.) However, this case dealt with the ability of "add-on" parties to a coordinated proceeding to challenge the coordination trial judge. (214 Cal.App.3d at 262-63.) *Industrial Indemnity* never addresses the rights of any party to challenge an assigned judge upon *consolidation*, as is the case here and was the case in *Nissan*. Noting that the issue was also one of first impression at the time, the *Nissan* Court – this Appellate Division - addressed *Industrial Indemnity*. In a footnote, the *Nissan* Court analyzed the application of *Industrial Indemnity* in cases of consolidation and found the holding in that case to be *inapposite*. (*Nissan*, 6 Cal.App.4th at 155.) The analysis is the same in the instant case: *Nissan* controls, while *Industrial Indemnification* has no application.

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

A stay of further proceedings in Respondent Court is necessary to preserve the status quo and thereby provide this Court with sufficient time to consider this Petition. As described above, Petitioners timely filed their Peremptory Challenge to Judge Komar, and thus he should be disqualified and the case should be transferred to another judge. To prevent Respondent Court from continuing to issue orders from the bench that may prejudice

Petitioners, this Court should order a stay of further proceedings in Respondent Court pending the final resolution of this petition.

## VI. CONCLUSION

Respondent Court's issuance of its February 19, 2010 order to transfer and consolidate gave Petitioners a clear right to file a Peremptory Challenge against Respondent Court under Code of Civil Procedure section 170.6. That guaranteed right, sounding in principles of due process, exists regardless of whether Petitioners had previously acquiesced to Judge Komar in any of the previously coordinated cases. The controlling case law and related authorities-*Nissan*, *Philip Morris*, and other authority, such as the California Civil Courtroom Handbook and Desktop Reference at § 14:50 (2009 ed.) – clearly establish the right of Petitioners to file the Peremptory Challenge upon the Court's issuance of the Order of Consolidation.

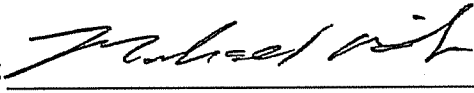
The only questions before Respondent Court were the timeliness and the form of the Peremptory Challenge. Petitioners' immediate filing of the Peremptory Challenge was certainly timely, and Petitioners clearly met the statutory requirements under Code of Civil Procedure section 170.6. Pursuant to Code of Civil Procedure section 170.3(d), Petitioners have no other adequate remedy at-law to review Respondent Court's denial of their timely and technically sufficient Peremptory Challenge other than this requested writ of mandate.

Based upon the foregoing, the Peremptory Challenge was timely and proper; the consolidated case must be assigned to another judge. Therefore, Respondent Court's March 8, 2010 denial of Petitioner's Peremptory Challenge was erroneous as a matter of law. Petitioner respectfully requests that mandate issue.

Respectfully submitted,

Dated: March 16, 2010

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

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

DATED: March \_\_, 2010

Respectfully submitted,

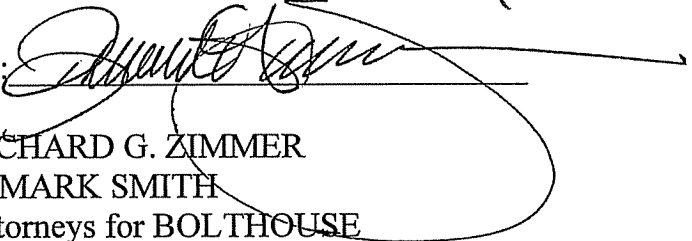
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By: \_\_\_\_\_  
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Attorneys for U.S. BORAX, INC.

DATED: March 16<sup>th</sup>, 2010

Respectfully submitted,

CLIFFORD & BROWN

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

DATED: March 16, 2010

Respectfully submitted,

MORRISON & FOERSTER LLP

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

DATED: March \_\_, 2010

Respectfully submitted,

CLIFFORD & BROWN

By: \_\_\_\_\_

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



DATED: March \_\_\_, 2010

Respectfully submitted,

LAW OFFICES OF LEBEAU  
THELEN, LLP

By: \_\_\_\_\_

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

DATED: March 16, 2010

Respectfully submitted,

GRESHAM SAVAGE NOLAN &  
TILDEN, A PROFESSIONAL  
CORPORATION

By: 

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

DATED: March 16, 2010

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BOB H. JOYCE  
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DATED: March \_\_, 2010

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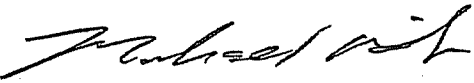
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BEN A. EILENBERG  
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GROUP, SHEEP CREEK WATER  
COMPANY, INC., and SERVICE  
ROCK PRODUCTS CORPORATION

**CERTIFICATE OF WORD COUNT**  
**(Cal. Rules of Court, Rule 14(c)(2))**

The text of this PETITION FOR WRIT OF MANDATE AND REQUEST FOR TEMPORARY STAY OF PROCEEDINGS consists of 9,485 words as counted by the Microsoft Word word-processing program used to generate the brief.

Dated: March 16, 2010

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

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

**PROOF OF SERVICE BY PERSONAL DELIVERY**

I am over the age of eighteen years and not a party to this action. My business address is 21 E. Carrillo St., Santa Barbara, CA, 93101. On March 18, 2010, I caused to be served via attorney service, First Legal Support the:

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

by delivering copies thereof to:

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

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

Further, I posted the document(s) to the website <http://www.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 March 18, 2010, at Santa Barbara, California.

  
\_\_\_\_\_  
Maria Kfachko-Blair