

Civ. No. _____

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

**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.

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

Real Parties In Interest

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

**EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF MANDATE
AND REQUEST FOR TEMPORARY STAY OF PROCEEDINGS
EXHIBITS 9-27 [VOLUME 2 OF 3]**

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CORPORATION

LIST OF EXHIBITS

Exhibit 1	Reporter's Transcript of Proceeding and Order Granting Petition for Coordination - June 17, 2005, Judicial Council Proceeding No. 4408, Superior Court of the State of California for the County of Orange, the Honorable David C. Velasquez presiding, filed June 17, 2005.
Exhibit 2	Respondent Court's Order After Hearing on Jurisdictional Boundaries, entered November 3, 2006.
Exhibit 3	Respondent Court's Revised Order After Hearing on Jurisdictional Boundaries, entered March 12, 2007, filed March 16, 2007.
Exhibit 4	Plaintiff Rebecca Willis' Response to Ex Parte Application For Order Continuing Trial Date and to AGWA's Request for Order Protecting Phase 2 Findings, filed October 1, 2008.
Exhibit 5	Respondent Court's Order After Phase Two Trial on Hydrologic Nature of Antelope Valley, entered November 6, 2008, filed November 12, 2008.
Exhibit 6	Reporter's Transcript of Proceedings - April 24, 2009, Judicial Council Proceeding No. 4408, the Honorable Jack Komar presiding, filed April 24, 2009.

Exhibit 7	Federal Defendants' Reply to Landowner Defendants' Motion to Dismiss Public Water Suppliers' Cross-Complaint and Responses Thereto, filed June 18, 2009.
Exhibit 8	<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 9	Federal Defendants' Response to Motion to Transfer and Consolidate, filed August 3, 2009.
Exhibit 10	Reporter's Transcript of Proceedings - October 13, 2009, Judicial Council Proceeding No. 4408, the Honorable Jack Komar presiding, filed October 13, 2009.
Exhibit 11	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) Peremptory Challenge to Assigned Judge (C.C.P. § 170.6), filed October 13, 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	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.
Exhibit 16	City of Los Angeles' Joinder in Opposition to Peremptory Challenge to Assigned Judge, filed October 19, 2009.
Exhibit 17	Phelan Piñon Hills Community Services District's Opposition to Peremptory Challenge (C.C.P. § 170.6), filed October 19, 2009.
Exhibit 18	Federal Defendants' Response to Peremptory Challenge to Assigned Judge (CCP 170.6), filed October 19, 2009.
Exhibit 19	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 20	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.
Exhibit 21	Santa Clara County Superior Court Minute Order from October 22, 2009, filed October 22, 2009.
Exhibit 22	Santa Clara County Superior Court Minute Order from October 23, 2009, filed October 23, 2009.
Exhibit 23	Santa Clara County Superior Court Minute Order from October 23, 2009 (2nd), filed October 23, 2009.
Exhibit 24	Reporter's Transcript of Proceedings - October 27, 2009, Judicial Council Proceeding No. 4408, the Honorable Jack Komar presiding, filed October 27, 2009.

Exhibit 25	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 26	Order of the Court of Appeal – State of California Fourth District, Division Two, Antelope Valley Groundwater Agreement Association et al. v. Superior Court of Los Angeles County, E049581, filed November 19, 2009.
Exhibit 27	Respondent Court's Order Transferring and Consolidating Actions for All Purposes, filed February 19, 2010.
Exhibit 28	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) Peremptory Challenge to Assigned Judge (C.C.P. § 170.6), filed February 19, 2010.
Exhibit 29	Los Angeles County Superior Court Minute Order from February 19, 2010, filed February 19, 2010.

Exhibit 30	Public Water Suppliers' Opposition to Code of Civil Procedure Section 170.6 Peremptory Challenge, filed February 26, 2010, and Joinders of City of Los Angeles, Phelan Piñon Hills Community Services District, and State of California.
Exhibit 31	Federal Defendants' Response to Peremptory Challenge to Assigned Judge (CCP § 170.6), filed February 26, 2010.
Exhibit 32	Minute Order from February 26, 2010 regarding late add-ons to Willis Class, filed February 26, 2010.
Exhibit 33	Cross-Defendants' Reply to Oppositions to Peremptory Challenge to Assigned Judge, filed March 4, 2010.
Exhibit 34	Reporter's Transcript of Proceedings – March 8, 2010, Judicial Council Proceeding No. 4408, the Honorable Jack Komar presiding.
Exhibit 35	Order Denying the Challenging Parties' Peremptory Challenge pursuant to CCP section 170.6, filed March 9, 2010.
Exhibit 36	Order and Notice to All Counsel Regarding Phase 3 Trial on Status of Aquifer and Issue of Overdraft, filed March 10, 2010.

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 East Carrillo Street, Santa Barbara, CA 93101.

On March 18, 2010, 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 9-27 [VOLUME 2 OF 3]

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 Los Angeles, California.



Maria Klachko-Blair

Exhibit 9

1 The United States respectfully submits its response to the City of Palmdale's, *et al.*
2 (collectively the "Public Water Suppliers or PWS"), Notice of Motion and Motion to
3 Transfer and to Consolidate for All Purposes; Memorandum of Points and Authorities;
4 Declaration of Whitney G. McDonald ("*PWS Consolidation Motion*"), filed July 15, 2009.
5 The PWS state that "consolidation will allow for the entry of single statements of decision
6 in subsequent phases and a single judgment [and] . . . permit the Court to handle these
7 already coordinated and complex proceedings as a single action." *Id.* at 4.

8 **1. Overview.**

9 As an initial matter, the United States not only supports the goals of consolidation,
10 but maintains that these goals are imperative. To retain jurisdiction over the United States
11 the litigation must achieve a mutually binding adjudication of all rights to water in the
12 groundwater basin. As we stated in our June 18, 2009 brief on this matter, the present
13 coordination of complex cases may lead to separate and non-mutually binding
14 determinations of rights and interests entered in separate decrees. *Federal Defendants'*
15 *Reply to Landowner Defendants' Motion to Dismiss Public Water Suppliers' Cross*
16 *Complaint and Responses Thereto*, at 2-3. This has the potential to produce only
17 piecemeal adjudication of limited rights that are neither binding on all users nor
18 enforceable by all users. Such an amalgam of decrees would not effect a comprehensive
19 adjudication of the rights to water in the Antelope Valley aquifer and would fail to satisfy
20 the requirements of the McCarran Act which provides the waiver of immunity for the
21 United States to be joined in this action. See *Colorado River Water Conservation Dist. v.*
22 *United States*, 424 U.S. 800, 819 (1976); see also *Arizona v. San Carlos Apache Tribe of*
23 *Arizona*, 463 U.S. 545, 569 (1983).

24 Consolidation, therefore, provides a mechanism to unify the case, result in a single
25 decree binding on all parties, and potentially satisfy the McCarran Amendment. To that
26 end, and because the cases have a common question of law or fact, complete consolidation
27 is appropriate here.

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2. Consolidation is warranted because the cases involve a common question of law and fact.

A judge may consolidate actions when they involve a common question of law or fact. Cal. Civ. Proc. Code § 1048(a) (2009). "Common questions" between cases are areas of "overlap"; identical or similar parties and/or claims. *Medlock v. Taco Bell Corp.*, 2009 WL 1444343, at *1 (E.D. Cal. May 19, 2009). Pursuant to § 1048, "[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Cal. Civ. Proc. Code § 1048(a).

Here, it has already been determined that the cases involve common questions of law and fact because the cases have been coordinated. *See* Cal. Civ. Proc. Code § 404. Moreover, one of the factors considered prior to coordination is if common questions of law or fact are predominating or significant to the litigation. *Id.* at § 404.1.

The predominating common question in this case is the determination of rights to groundwater in the Antelope Valley groundwater basin. All the parties share this commonality including the dormant landowners, the small and large pumpers, the municipal water providers, the purveyors, and the federal government. The Willis class of non-pumping landowners, for example, recognize that the Antelope Valley groundwater adjudication "has been combined with other cases to determine all the groundwater rights in the Basin." (Willis) Notice of Class Action, at 1 (attached as Exh. A to Plaintiff Willis' Order Modifying Class Definition and Allowing Parties to Opt in the Plaintiff Class, filed May 22, 2008); *see also* Second Order Modifying Definition of Plaintiff [Willis] Class, dated September 2, 2008, at 2 ("The claims asserted on behalf of the Class raise common issues of fact and law, which predominate over any individual issues.") Moreover, this class was certified "in light of the need to obtain a comprehensive allocation of water rights that is binding on all landowners within the Basin." Order Certifying Plaintiff Class, dated September 9, 2007, at 2, ¶ 7.

1 Similarly, the Wood class of small pumpers claims that “[t]here are common
2 question [sic] of law and fact as to all members of the Class, which predominate over any
3 questions affecting solely individual members of the Class. Specifically, the Class
4 members are united in establishing (1) their priority to the use of the Basin's groundwater
5 given their capacity as overlying landowners” First Amended Class Action
6 Complaint (Wood Class), dated June 20, 2008, pp. 7-8, ¶ 21. Because the coordinated
7 cases involve the common question of rights to groundwater these cases are appropriate
8 for complete consolidation.

9 **3. Consolidation for all purposes is proper.**

10 Section 1048 of the California Code has been interpreted by courts to permit
11 complete consolidation, or consolidation of particular issues for trial only. *See Sanchez v.*
12 *Superior Court of Santa Clara County*, 203 Cal. App. 3d 1391, 1396 (Cal. Ct. App. 1988).
13 Both complete consolidation and consolidation for trial require a common question of law
14 or fact. *Hamilton v. Asbestos Corp., Ltd.*, 22 Cal. 4th 1127, 1148 n.12 (Cal. 2000). In a
15 complete consolidation, however, "the pleadings are regarded as merged, one set of
16 findings is made, and one judgment is rendered." Judge Robert I. Weil & Judge Ira A.
17 Brown, Jr., *Cal. Prac. Guide: Civ. Pro. Before Trial* § 12:341.1 (The Rutter Group 2007);
18 *see also Sanchez*, 203 Cal. App. 3d at 1396. Otherwise stated, complete consolidation is
19 proper when "the causes of action might have been united." *Smith v. Smith*, 80 Cal. 323,
20 324 (Cal. 1889). In these coordinated cases, all the causes, including determination of
21 safe yield, overdraft, prescription, rights priority, reserved rights, and a physical solution
22 unite to produce a determination of the parties' relative rights to groundwater. Therefore,
23 complete consolidation is proper.

24 **4. The cases have already been transferred.**

25 In their Consolidation Motion, the Public Water Suppliers request that, "to the
26 extent not already transferred, the Court is authorized to order whatever transfers are
27 deemed necessary to allow complete consolidation." PWS Consolidation Mtn. at 9. In
28 this case, however, the Judicial Council has already effected a transfer of the coordinated

1 actions by assigning the actions to Judge Komar and the Superior Court of Santa Clara
2 County. See Exhibit 2 attached to PWS Consolidation Mtn. Accordingly, no further
3 transfer of the respective cases is necessary prior to consolidation.

4 The California Rules define "transfer" as the "means to remove a coordinated
5 action or severable claim in [an] action from the court in which it is pending to any other
6 court under rule 3.543, without removing the action or claim from the coordination
7 proceeding." Cal. Civ. Code § 3.501 (19) (2009). Here, the Judicial Council's August 31,
8 2005 order effected a transfer by assigning Judge Komar as the coordination trial judge,
9 and vested him with the authority to "hear and determine the coordinated actions listed
10 below, at the site or sites that he finds appropriate." PWS Consolidation Mtn. at Exh. 2.
11 The Judicial Council continues that, pursuant to the coordination, "the coordination trial
12 judge may exercise all the powers over each coordinated action of a judge of the court in
13 which that action is pending." *Id.* Because the cases have already been effectively
14 transferred to Judge Komar, it is within his powers to consolidate without further action
15 by way of a transfer. Cal. Civ. Proc. Code § 1048(a) (2009).^{1/}

16 **5. Conclusion.**

17 A complete consolidation is necessary in order to achieve a comprehensive
18 adjudication and comport with the requirements set forth in the McCarran Amendment.
19 Because the predominating common question in this case is the determination of water
20 rights within the groundwater basin, complete consolidation is warranted.

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24 ^{1/} A coordination judge is vested with "whatever great breadth of discretion that may be
25 necessary and appropriate to ease the transition through the judicial system and the logjam of cases
26 which gives rise to coordination." *Ableson v. Nat'l Union Fire Ins. Co.*, 28 Cal. App. 4th 776, 786
27 (Cal Ct. App. 1994)(quoting *McGhan Medical Corp. v. Superior Court*, 11 Cal. App. 4th 804 (Cal.
28 Ct. App. 1992); see also *Fellner v. Steinbaum*, 132 Cal. App. 2d 509, 511 (Cal. Ct. App. 1955)
(concluding that the consolidation of two cases for trial was "committed to the sound discretion of
the trial judge"). Therefore, the United States agrees with the Public Water Suppliers that the Court
has authority to transfer cases to the extent transfer has not already occurred, but believes this action
is unnecessary in the instant case.

PROOF OF SERVICE

I, Linda Shumard, declare:

I am a resident of the State of Colorado and over the age of 18 years, and not a party to the within action. My business address is U.S. Department of Justice, Environmental and Natural Resources Section, 1961 Stout Street, 8th Floor, Denver, Colorado 80294.

On August 3, 2009, I caused the foregoing documents described as; FEDERAL DEFENDANTS' RESPONSE TO MOTION TO TRANSFER AND CONSOLIDATE, to be served on the parties via the following service:

BY ELECTRONIC SERVICE AS FOLLOWS by posting the documents(s) listed above to the Santa Clara website in regard to the Antelope Valley Groundwater matter.

BY MAIL AS FOLLOWS (to parties so indicated on attached service list): By placing true copies thereof enclosed in sealed envelopes addressed as indicated on the attached service list.

BY OVERNIGHT COURIER: I caused the above-referenced document(s) be delivered to FEDERAL EXPRESS for delivery to the above address(es).

Executed on August 3, 2009, at Denver, Colorado.

/s/ Linda Shumard
Linda Shumard
Legal Support Assistant

Exhibit 10

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE HONORABLE JACK KOMAR, JUDGE
DEPARTMENT 19

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COORDINATION PROCEEDING
SPECIAL TITLE (RULE 1550(B)

ANTELOPE VALLEY GROUNDWATER
CASES

)
)
) JUDICIAL COUNCIL
) COORDINATION PROCEEDING
) NO. 4408
) SANTA CLARA COUNTY
) CASE NO.1-05-CV-049053

INCLUDED ACTIONS:

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)

WM. BOLTHOUSE FARMS, INC., V.)
CITY OF LANCASTER)
DIAMOND FARMING CO. V. CITY)
OF LANCASTER)
DIAMOND FARMING CO. V.)
PALMDALE WATER DISTRICT)
SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF RIVERSIDE,)
CONSOLIDATED ACTIONS,)
CASE NOS. RIC 353 840,)
RIC 344 436, RIC 344-668)

WILLIS v. LOS ANGELES COUNTY)
WATERWORKS DISTRICT NO. 40)
SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF LOS ANGELES,)
CASE NO. BC 364 553)

WOOD v. LOS ANGELES COUNTY)
WATER WORKS DISTRICT NO. 40)
SUPERIOR COURT OF CALIFORNIA,)
COUNTY OF LOS ANGELES,)
CASE NO. BC 391869)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
OCTOBER 13TH, 2009

A P P E A R A N C E S:

FOR THE CITY OF PALMDALE:	JAMES MARKMAN ATTORNEY AT LAW
FOR DIAMOND FARMING, ET AL:	BOB JOYCE ATTORNEY AT LAW
FOR U.S. BORAX:	WILLIAM SLOAN ATTORNEY AT LAW
FOR ANTELOPE VALLEY UNITED GROUP:	MICHAEL DAVIS ATTORNEY AT LAW
FOR BOLTHOUSE PROPERTIES:	RICHARD ZIMMER ATTORNEY AT LAW
FOR ANTELOPE VALLEY GROUNDWATER AGREEMENT ASSOCIATION:	MICHAEL FIFE ATTORNEY AT LAW
FOR RICHARD WOOD:	MICHAEL MCLACHLAN ATTORNEY AT LAW
FOR REBECCA WILLIS:	RALPH KALFAYAN ATTORNEY AT LAW
FOR LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40:	JEFFREY DUNN ATTORNEY AT LAW
FOR AGWA:	BRADLEY J. HERREMA ATTORNEY AT LAW
FOR NORTHROP GRUMMAN, ET AL.: (VIA COURT CALL)	TAMMY L. JONES ATTORNEY AT LAW
FOR COPA DE ORA LAND CO.:	STEPHEN M. SIPTROTH ATTORNEY AT LAW
FOR ANTELOPE VALLEY JOINT UNION HIGH SCHOOL DISTRICT: (VIA COURT CALL)	ANNA MILLER ATTORNEY AT LAW
FOR CAMERON PROPERTIES: (VIA COURT CALL)	CLIFF MELNICK ATTORNEY AT LAW

1	FOR MIKE FLOYD: (VIA COURT CALL)	MIKE FLOOD ATTORNEY AT LAW
2		
3	FOR SOUTHERN CALIFORNIA EDISON COMPANY: (VIA COURT CALL)	MAY M. GANTVOORT ATTORNEY AT LAW
4		
5	FOR UNITED STATES: (VIA COURT CALL)	R. LEE LEININGER ATTORNEY AT LAW
6		
7	FOR VAN DAM & ANTELOPE VALLEY: (VIA COURT CALL)	SCOTT K. KUNEY ATTORNEY AT LAW
8	OFFICIAL COURT REPORTER:	ALICIA PLANCARTE CSR# 12161
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1 SAN JOSE, CALIFORNIA

OCTOBER 13TH, 2009

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P R O C E E D I N G S

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THE COURT: We have a sign in-list. Let's
6 find out by calling roll who on the Court Call list is
7 present. As your name is called answer present or
8 here.

9

THE CLERK: Tammy Jones.

10

MS. JONES: Present.

11

THE CLERK: Michael Crow, Michael Crow.

12

Steven Siptroth.

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MR. SIPTROTH: Present.

14

THE CLERK: Mr. Herrema is here.

15

John Tootle, John Tootle. Bradley Weeks.

16

Christopher Sanders. Ana Miller.

17

MS. MILLER: Present.

18

THE CLERK: Edward Renwick, Edward Renwick.

19

John Ukkestad, Robert Kuhs, Keith Lemieux. Malissa

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McKeith. Cliff Melnick.

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MR. MELNICK: Present.

22

THE CLERK: Mike Flood.

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MR. FLOOD: Present.

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THE CLERK: Richard Wood, Susan Trager, Amy

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Gantvoort.

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MS. GANTVOORT: Present.

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THE CLERK: R. Lee Leininger.

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MR. LEININGER: Present.

1 THE CLERK: Scott Kuney.

2 MR. KUNEY: Present.

3 THE COURT: Is there anybody on the
4 telephone whose name has not been called? All right.

5 Well, we've got principally a motion here in
6 connection to the previous motion to transfer and
7 consolidate.

8 Who is going to speak to that opposition?

9 MR. MARKMAN: James Markman for the City of
10 Palmdale for the moving party.

11 THE COURT: Who is going to speak on the
12 opposition?

13 MR. JOYCE: Bob Joyce --

14 THE COURT: I'm asking you to step forward
15 to counsel table, identify yourself at that time. And
16 try and stay where you are so that the court reporter
17 can follow.

18 MR. JOYCE: Bob Joyce on behalf of Diamond
19 Farming, Crystal Organic Enterprises Inc. and Office
20 Land Company.

21 MR. SLOAN: William Sloan on behalf of U.S.
22 Borax.

23 MR. DAVIS: Michael Davis on behalf of
24 Antelope Valley United Mutual Group, Service Rock
25 Product Corporation Enterprises Inc. and Sheet Creek
26 Water Company.

27 MR. ZIMMER: Richard Zimmer on behalf of
28 Bolthouse Properties and Bolthouse Farms.

1 MR. FIFE: Michael Fife on behalf of
2 Antelope Valley Groundwater Agreement Association.

3 MR. MCLACHLAN: Michael McLachlan on behalf
4 of the small pumper class.

5 MR. KALFAYAN: Ralph Kalfayan on behalf of
6 the Willis class.

7 MR. DUNN: Jeffrey Dunn on behalf of
8 Rosenbaum Community Services District and Los Angeles
9 County Waterworks District Number 40.

10 THE COURT: Moving party first.

11 MR. MARKMAN: Well, your Honor, this has
12 been briefed back and forth about six times. I think
13 when I sum this up as a bit of a surprise on my part
14 that any party presently in this proceeding that's seen
15 all these papers will so oppose having one trial and
16 having one judgment that manages the water rights of
17 the resources of this basin.

18 The only reason we are even having these
19 discussions is because we needed MacKaren (phonetic)
20 Act jurisdiction so two classes were created at the
21 Court's suggestions, plaintiffs classes. And in those
22 pleadings filed by those plaintiffs class attorneys who
23 are here they actually prayed for declaratory relief
24 and a declaration of all the water rights that are
25 present in the basin, including theirs, comparing
26 theirs to everybody else. Even though there were only
27 certain defendants named they ask for that kind of
28 broad relief and management of the basin. So it's more

1 interesting to me what nobody has disagreed with.
2 Number one, common issues of law and fact are pervasive
3 in this case, there's not much difference between these
4 and the Indian Wells or redevelopment plants as far as
5 we can see, or any other case, that is the, that is the
6 benchmark for consolidation. That's the substantive
7 criteria.

8 Secondly, we have procedural issues, any of
9 which I'd discuss in detail, if the Court sees fit, but
10 basically service of process, a method of serving
11 process on everybody, suggesting somehow that didn't
12 occur when we obviously served this motion in
13 accordance with the way you present motions in this
14 proceeding pursuant to the Court's coordination powers,
15 and we did so.

16 Furthermore, everyone argues that obviously
17 received notice. I don't know whose right they are
18 asserting that may not have received notice, but
19 nobody's even been drenched up to come and make that
20 claim even after this state, after two or three
21 continuances. This just seems to be simple to me than
22 it has been made out to be by some of these arguments.

23 The one argument, for example, that you
24 can't consolidate cases that have been coordinated
25 because by definition they are complex based on a Court
26 Rule that only applies to noncomplex cases doesn't make
27 sense to me. It seems to me that there's been a lot of
28 hurdles put in front of getting to a process that

1 everybody must agree with. One trial, not multiple
2 trials, one disposition of all the substantive issues
3 in this case that applies to everybody at one time
4 resulting in one judgment where everybody's rights,
5 whether they're intersaying against everybody else or
6 only against some select parties, are all there in one
7 document so that the Court and the parties subject to
8 it can see that it's administered properly. So I don't
9 want to go over the details of all these arguments.

10 THE COURT: Mr. Dunn, did you want to add
11 anything?

12 MR. DUNN: Yes, your Honor.

13 When we went back and looked at the Court
14 record to see if in fact a consolidation order had been
15 put in place the one thing that we came to understand
16 or realize is we did have that, we went back over
17 through this extensive record is that if there has not
18 been an order put in place, the proceedings, all
19 proceedings today have been conducted as if such an
20 order had been in place. All of the hearings have
21 involved both the classes and involved issues involving
22 the United States and MacKaren. There's been no
23 division by pleading or by party, instead what has
24 happened is as I look to my right and I see this
25 distinguished group of counsel, all of them have
26 voluntarily weighed in on issues involving both classes
27 that grade in on issues involving service.

28 The record will also reflect that on the

1 matters involving the two class action complaints that
2 the various landowner parties were active in this case
3 that participated in those discovery proceedings
4 including the meet and confer letters, and without, you
5 know, taking much more of the Court's time here, it
6 simply comes down to this. If there has not yet been
7 an order consolidating these cases for all purposes
8 we've had that certainly as a de facto consolidation,
9 and the reason it's been done that way is it has to be
10 done that way in a case like this to have the
11 multiplicity of proceedings as Mr. McLachlan and
12 Mr. Markman described would create such an undue burden
13 and, and the impracticality upon the Court, I really
14 can't see that.

15 So I'll close though with the comment that I
16 think there has been a consolidation for all purposes
17 today by conduct of the parties, and to the extent that
18 there's any remaining concern that somehow
19 consolidation, you know, either expands the scope of
20 the pleadings and makes people adverse or not adverse,
21 it does no such thing. It simply allows for the
22 judicial use, excuse me, the efficient use of judicial
23 resources both the courts and the parties and so we can
24 continue to move this case towards a resolution. Thank
25 you.

26 THE COURT: Thank you.

27 All right. Your position?

28 MR. JOYCE: Your Honor, I'll make just an

1 initial observation.

2 THE COURT: I just ask that you really don't
3 repeat what's in your papers because your papers have
4 been very clear as to the position of the case.

5 MR. JOYCE: I understand that, your Honor,
6 and Bob Joyce on behalf of Diamond Farms.

7 COURT CALL: Who's my driver?

8 THE CLERK: Excuse me, you're coming through
9 the court.

10 THE COURT: Go ahead, Mr. Joyce.

11 MR. JOYCE: Yes, your Honor. Bob Joyce on
12 behalf of Diamond Farming, Crystal Organic Enterprises
13 and Office Land Company.

14 My observation is, your Honor, that rules of
15 civil procedure, court rules, those are designed and
16 intended to aid both parties and the court is
17 administering our system to ultimately achieve a sound
18 and a just conclusion. Common vote is between civil
19 litigants an incorrect observation made by opposing
20 counsel is that the affect of this court order would
21 not do any of the things that we point out in our
22 opposition that it would have a tendency to do, one of
23 which is obviously it turns the situation where I am
24 neither a defendant in an action involving, in that
25 brought by the United States against my client, nor
26 have I sued the United States, suddenly I will be put
27 into a situation where I'm adverse to the interest of
28 the United States. Same situation now pertains to the

1 classes in a sense that I have not sued any member of
2 the class nor the class representative, neither have
3 they sued myself. Most significantly, your Honor, this
4 motion to consolidate is merely the flip side of the
5 same coin of the motion to dismiss for failure to join
6 indispensable parties. For the Court to deny that
7 motion the Court --

8 THE COURT: Let me ask you a question,
9 Mr. Joyce, what do you make of California Rule of Court
10 2.541(b)(1)?

11 MR. JOYCE: The Court would have to assist
12 me. I'm not -- I don't know off the top of my head --

13 THE COURT: That provides that the
14 coordination judge has the power to transfer cases from
15 one court to another within the discretion of the Court
16 for good cause.

17 MR. JOYCE: And your Honor, I think there's
18 a distinction between transferring and consolidation.

19 THE COURT: Well, isn't that a first step?

20 MR. JOYCE: Assuming the Court --

21 THE COURT: Lays a foundation for
22 consolidation under 1048 of the Code of Civil
23 Procedure.

24 MR. JOYCE: The practical outcome is that
25 assuming that you're transferring, and I'm not aware of
26 any case that's not presently pending by virtue of the
27 coordination order before this Court in any event.

28 THE COURT: Well, there's a difference

1 though between a coordination order and transfer
2 pursuant to the coordination order in terms of them
3 affixing the venue of that case. Each one of these
4 cases that were filed in separate counties, remain
5 cases within those counties even though they are being
6 adjudicated pursuant to the coordination order. Let's
7 see if I can jump ahead a little bit and move this
8 along.

9 It seems to me that there are substantial
10 issues in this case that every pleading, every pleading
11 without exception implicates. And that is the
12 declaratory relief as to the status of the rights to
13 use the groundwater within the basin.

14 The Court has previously found that there's
15 a single aquifer. That seems to me, given the nature
16 of water law in California, groundwater law, to put
17 every party who is here, whichever court they may have
18 started in, with correlative rights that are
19 essentially making them a necessary party to any
20 ultimate judgment in this case. In other words, the
21 Court cannot adjudicate the rights of a party in one
22 part of the aquifer to -- without considering the
23 rights of the parties in another part of the aquifer
24 because those rights are correlative and they are
25 subject to the consequences of one part as to the
26 other.

27 So it seems to me that perhaps not all of
28 the causes of action related to the right to use the

1 water, some of them are damage actions, some of them
2 relate to settlement, some of them relate to inverse
3 condemnation and the like, but the central core of
4 every cause of action of every pleading, of every
5 complaint really relates to the right to use water and
6 those rights are correlative and they implicate every
7 other party in this proceeding, and that's why we have
8 attempted, and the Court has encouraged the parties to
9 join together to deal with these issues. The issues
10 that have arisen, whether they are the class action
11 issues or the other issues, all fall within the same
12 basic core principal. Now I understand your
13 consternation and the concern of everybody in terms of
14 the causes of action that really are not part of the
15 question concerning declaratory relief and the request
16 that the Court find there's a physical solution.

17 All of the parties here have participated in
18 the issues that have been adjudicated thus far with
19 regard to the nature and jurisdiction of the Court, the
20 nature of the aquifer, whether it's a single aquifer or
21 not, and now we are moving into another issue that
22 still relates directly to the question of water rights
23 and whether or not the basin is in a condition of
24 overdraft, the safe field is and the like. And while I
25 understand the technical objections which you've raised
26 and frankly I don't think are valid --

27 And I intend -- I'm intending at this point
28 to overrule your objections and to do two things. One,

1 order a transfer of these proceedings from Riverside
2 and Kern County to Los Angeles County, and then take up
3 the issue of how we consolidate the various causes of
4 action, so that we don't do an injustice to anybody in
5 terms of affecting whatever rights they may have to
6 some of the causes of action, yet bringing together in
7 a single proceeding the cause of action for declaratory
8 relief, which seems to me to be the principal one that
9 we have to deal with here first in determining whether
10 or not we can have a sufficient adjudication of
11 everybody's rights, and also to comply with the
12 Maclaren Act.

13 And so that's where I'm headed and if you
14 want to address those issues I'd be happy to hear
15 whatever other argument you might have.

16 MR. JOYCE: Well, your Honor, actually
17 before the Court expressed its views I was headed to
18 some extent in the very same direction, but what I
19 really wanted the Court to both appreciate and fully
20 understand, and that was why I prefaced my comment as I
21 did, and that is as things currently stand there are
22 pending motions before the Court to allocate expert
23 witnesses' fees, costs from Mr. MacLachlan's class.
24 There's prospectively from what I've been hearing
25 settlements, there may be applications for attorney's
26 fees. Under the current posture of the case I have no
27 exposure to any of those.

28 The effect of the order of consolidation

1 that the Court is heading towards is essentially to
2 certify a cross-defendant class, i.e. presumably under
3 the purveyors' first amended cross-complaint, thus then
4 in subjecting myself and Mr. MacLachlan's people under
5 the same litigation under the same complaint, the same
6 with Mr. Kalfayan. Suddenly I'm now a party to the
7 same action, consequently theoretically exposed. That
8 is a significant shift in the posture of the case from
9 my vantage point, that is the reason I have resisted
10 consolidation primarily because -- and that's the
11 reason why I proposed a single judgment, because as it
12 currently stands the pleadings will not permit the
13 outcome that I can see coming.

14 THE COURT: Well, the Court does have
15 discretion to deal with the question of allocation of
16 fees and costs and obviously the role various parties
17 play in litigation and the extent of their causes of
18 action, the defenses will have some significant bearing
19 upon. I understand that there's been a tentative
20 settlement reached between the classes in the water
21 purveyors. I have not seen that. I don't know what
22 the terms are. I don't know what the agreement is. So
23 it's really premature for me to, as the Court to run
24 conclusions, inferences at all about that, but I would
25 not do anything with regard to consolidation that would
26 impact negatively the settlement that these parties
27 have entered into. I want to see what it is. And I
28 want to see what the agreement is and what the impact

1 of the consolidation might have on that.

2 The United States has responded to the
3 objection filed under this class, and at this point I
4 can't really decide that issue 'cause I don't know what
5 the settlement is, but it seems to me that a settlement
6 that puts that settlement into a single judgment
7 ultimately carries out the purpose of the Maclaren Act,
8 is not contrary to it and ultimately benefits all the
9 parties to this adjudication, whatever the ultimate
10 determination might be as to the status of the aquifer
11 and the rights of the parties to that water. So it's a
12 little bit premature. And I think that the form of the
13 order of consolidation is something we are going to
14 have to work on. I don't think that we are in a
15 position at all to be able to actually formulate that
16 order, but I do think that the Court can make it a
17 generalized order at this point that the parties engage
18 in a meet and confer to prepare a consolidation order
19 because I am ordering a transfer of these actions to
20 Los Angeles County.

21 MR. JOYCE: Your Honor, I just reiterate
22 that any order that would create a circumstance where I
23 am now a party to the same action as the classes raises
24 the very concern I have because the Court has
25 articulated the Court has discretion. Currently the
26 Court does not have discretion. I am not a party,
27 therefore I'm not exposed. Once the Court has the
28 discretion, in my mind, I'm significantly exposed.

1 THE COURT: Well, you may be, but the
2 ultimate effect to that is I don't know at this point.

3 MR. JOYCE: And I can't gamble on that, your
4 Honor.

5 THE COURT: All right. Mr. Dunn?

6 MR. DUNN: Your Honor, I'd like to make an
7 observation relative to the small pumper class. Some
8 of these I believe Mr. Kalfayan agrees with, but I
9 won't necessarily speak for him.

10 My concern is that -- well, let's start from
11 the foundation, which is do we have an existing
12 precedent for what we are trying to do here? No.

13 If there was a case out there in which class
14 action was consolidated into another civil litigation I
15 was not able to find it. There is one in Southern
16 District of New York that looks like it possibly might
17 have been going that way, but there's not really. I
18 couldn't find any published authority on it.

19 My concern is that in order to -- we are now
20 in the process of trying to document the settlements
21 that were reached with Justice Robie, and then we'll
22 take some time more with the various public bodies that
23 have to approve these things and so forth before it
24 reaches your desk.

25 It is ultimately that settlement in either
26 of the class cases needs to result in final judgment
27 for the class. I think we can put the classes to bed
28 once and for all and not jeopardize the MacKaren

1 jurisdiction without having to consolidate. And I
2 think that we may end up blowing the classes up if we
3 consolidate them into this litigation because there's a
4 dearth of applicable law, it's hard to really say, we
5 are in effect charting new grounds here.

6 So in that sense it makes me want to be more
7 conservative and my suggestion to the Court is that we
8 let the settlements come to the Court in their current
9 case, their current case number, and have those
10 reviewed by the Court and then at some later date if
11 for some reason they don't work or there's a problem
12 with them and the classes are still around then you can
13 consolidate into a larger proceeding. We can always do
14 that. But I think -- I don't want to -- I can't, I'm
15 not at liberty to disclose specific terms of the
16 settlement, but I think it's a possibility that the
17 classes can be put to bed and all issues resolve
18 between the class members and the public water
19 suppliers, and allow the rest of the litigation to
20 proceed and still have jurisdiction over the United
21 States because the claims of the class would have been,
22 have been resolved. And so there is no need for
23 another judgment down the road.

24 THE COURT: The difficulty as I see it, you
25 know, the difficulty for me to really express an
26 understanding 'cause I don't know what your settlement
27 is, but each member of that class has a reciprocal
28 right to water that relates to every other pumper or

1 overlying owner in the valley. So that I really don't
2 understand the surrender to a separate judgment on
3 behalf of the classes and ensure that there would be no
4 further litigation between the members of the class and
5 any of the other overlying landowners.

6 And you may settle out the purveyors, the
7 water suppliers, but you don't settle out the other
8 overlying landowners, I think. But it's premature for
9 me to draw any conclusion at all about that. But I
10 think that ultimately what is necessary in this case,
11 whatever the ultimate facts might be that you find that
12 there be a judgment that affects every party to the
13 litigation, a single judgment. How we go about
14 achieving that without consolidation seems to me to be
15 a puzzle that I don't fully understand and -- but at
16 this point I think that it's in everybody's best
17 interest that there be a single judgment.

18 Now Mr. Joyce's concern about having to pay
19 somebody else's fees, I understand that because at this
20 point in time he has no obligation whatsoever to class
21 members to compensate for Court ordered expert fees.
22 And I would say this --

23 MR. DUNN: I think he was referring to
24 attorney's fees. Were you not?

25 MR. JOYCE: I was referring to the
26 attorney's fees, but also fees respective to
27 application fees at a later date.

28 THE COURT: That may be. But the only order

1 that I made at this point that would impact whatsoever
2 is the order of authorizing the appointment of an
3 expert to assist the Court, not to assist the parties,
4 and that's what that ruling was. And I know that you
5 disagree with the implications of that, but that's the
6 order that I made.

7 In terms of attorney's fees, because you're
8 not a direct -- it seems to me there's not a direct
9 relationship between Mr. Joyce's complaint and the
10 complaint that has been filed by the class. I fail to
11 see how at this point there could be attorney's fees
12 involving of any resolution there as to Mr. Joyce's
13 clients. And to the extent that the Court orders
14 consolidation, the Court does have the power and the
15 discretion, it seems to me, to ensure that parties are
16 not affected adversely by areas that they are not
17 interested.

18 MR. DUNN: There's a practical concern which
19 I've discussed with some of the public water suppliers,
20 but I think before we go on record on this issue is
21 that if, you know, it's hard to say exactly how the
22 cards play out, but there's a theoretical possibility
23 that if the book is not closed on the class members'
24 rights vis-a-vis, the settlement. In other words, if
25 they still can get their turn the class members' rights
26 are affected by the third or fourth phases of the trial
27 or whatever even comes beyond that.

28 Class counsel is obligated legally and

1 ethically to stay in the case and continue protecting
2 those rights, whatever they may be left over for any
3 number of years, and that's a prospect that I know the
4 public water suppliers do not like because the legal
5 bills are mounting, they are getting rather high.

6 I want everybody to be on record that if we
7 don't find a way to, to -- there is a way to do it. I
8 think -- I can't, you know, divulge the terms of the
9 settlement because of the confidentiality stipulation.
10 Once that's papered we can do that. But I think that
11 should be explored first. It sounds like your Honor is
12 going to do a two phase deal where we transfer and we
13 talk about consolidation.

14 THE COURT: I'm going to order that there be
15 a meet and confer in terms of that and recognizing
16 concerns of the issues that various parties might have,
17 but it does seem to me that there's no question the
18 Court has the authority to order a transfer. If
19 anybody disagrees with that I'd be happy to hear their
20 arguments concerning that. And then we'll deal with
21 the form of -- some form of consolidation which I think
22 has to happen in order to result in a single judgment.

23 And of course, I would invite the parties to
24 propose settlements, to talk to each other about
25 potential for unifications that have been. There are
26 future claims made by other overlying landowners to the
27 extent that Mr. McLachlan was talking about having
28 future liabilities which he has to protect against. It

1 seems there are a variety of ways of dealing with that.
2 That gets to settlement discussions, and that I don't
3 want to engage in that discussion here.

4 Mr. Zimmer, you have something?

5 MR. ZIMMER: Just for clarification, your
6 Honor.

7 My understanding what the Court is saying is
8 Mr. Joyce's client and my client for that matter or any
9 of the other defendants do not have exposure to
10 attorneys' fees or expert fees from the classes because
11 the matter has not yet been consolidated?

12 THE COURT: That's correct.

13 MR. ZIMMER: I agree with that. I disagree
14 with Mr. Dunn's comments about a de facto
15 consolidation.

16 But what I'm curious about is -- is the
17 Court's intention to stay with this case after whatever
18 happens today?

19 THE COURT: Yes. You're asking about
20 whether or not the Court can take an assignment to
21 continue hearing this case. I have communicated with
22 the assignment's office and the chief justice as
23 indicated. He's doesn't mind me staying on the case
24 and I'll agree to do that. I would not want to abandon
25 this case for, pardon the expression, midstream.

26 MR. ZIMMER: My concern is this, we started
27 out with a quiet title action down in Riverside and
28 that action still exists as to Mr. Joyce's client and

1 my client. The only reason that these classes ever
2 became an issue was because of the actions that were
3 filed by Los Angeles County and Kern County and L.A.
4 County, filing a comprehensive adjudication and asking
5 for declaratory relief of all the rights of all the
6 parties in the case. My client Bolthouse never asked
7 for that. Mr. Joyce's client never asked for that. We
8 simply asked --

9 THE COURT: You are a defendant in those
10 cases?

11 MR. ZIMMER: We are a defendant in those
12 cases.

13 So what happened after that was the county
14 was unable or did not want to have to serve all the
15 people that they should serve to properly bring the
16 action for declaratory relief of all rights in that
17 water basin. So the first discussion came up about
18 having a class. Now in my view there's absolutely no
19 question that this should be a defendant class. If
20 there had been a defendant class in this matter we
21 wouldn't be having the issues that we have now because
22 there would be a defendant class with an action brought
23 against them by Los Angeles County as it should because
24 those landowners are indispensable parties.

25 Now we are in a situation where we have
26 plaintiff classes in an attempt to settle their action
27 as plaintiffs, which does absolutely nothing to resolve
28 the problem that L.A. County has to have all landowners

1 in there as defendants to resolve the claims that they
2 have pleaded.

3 And we are, we are really ending up with a
4 procedural nightmare. I'm sure the Court didn't
5 contemplate that at the outset. We are ending up with
6 a procedural nightmare here that I'm not sure we are
7 able to fix. And I don't want to come back eight years
8 from now again. We were in Riverside for five years.
9 We have now been here for five years. And I don't want
10 to come back again and have to retry this case because
11 it benefits the purveyors. It spends everybody else
12 into the ground. We've been spending money, spending
13 money, and spending money.

14 And we are simply back in a situation where
15 they can't get their reliefs they claim and where
16 there's no conformance with the MacKaren Act, that's a
17 significant problem. I understand, and it's my
18 understanding that the Court today is intending to
19 consolidate this or not consolidate it.

20 Is that correct?

21 THE COURT: Yes.

22 MR. ZIMMER: I think that's all the comments
23 I have and the rest is in the papers.

24 THE COURT: What do you see is the
25 difference between a plaintiffs class and a defendants
26 class vis-a-vis the water purveyors? The classes have
27 sued for declaratory relief among other things of the
28 water providers, and it seems to me that that creates

1 the same issue that you would have if they were being
2 sued as a defendant class.

3 MR. ZIMMER: Well, I think the answer to
4 that is obvious, the classes don't feel that way.
5 You've heard both Mr. McLachlan and Mr. Kalfayan came
6 into this court on numerous occasions saying, we have
7 limited action. We are only seeking a determination of
8 our -- there's no proscriptive rights against us. I
9 asked Mr. Dunn at the last hearing, is L.A. County
10 still making the same claims against the classes that
11 they're going to determine the classes' rights as
12 correlative rights holders? He said, yes, we are still
13 making that claim.

14 The classes still think they are getting out
15 by simply dealing with proscriptive rights. The
16 difference is huge. The differences between solely
17 being plaintiffs and the difference between being
18 defendants to a declaratory relief action is seeking to
19 declare their overlying rights. That's a huge
20 difference in my mind.

21 THE COURT: Well, it seems to me that the
22 issue is ultimately going to be assuming that the
23 aquifer is an overdraft, assuming so then it's going to
24 be a question of a physical solution, and that physical
25 solution is going to impact the class as well as every
26 other party in this action. And it seems to me that's
27 the ultimate objective, to get everybody's correlative
28 rights at issue and resolved. And I don't understand,

1 of course, I don't know what the settlement is, but I
2 don't understand that anything I've heard from the
3 purveyors or anybody else is looking to a different
4 result than that. I mean, if the basin is in overdraft
5 there's a serious issue that has been presented to the
6 Court for resolution.

7 MR. ZIMMER: I agree that in the end if
8 there is a physical solution you may end up at the same
9 point, but from a pleading standpoint, from a burden of
10 proof standpoint there are huge issues that relate to
11 the burden of proof, who is bringing the action under
12 case law, who is required to prove what, and that's the
13 critical issue.

14 Now if, if the Court consolidates you're
15 still going to have to have determinations of pleadings
16 who is suing who for what. But my view is it shouldn't
17 be consolidated. The county should name defendants,
18 they should serve those defendants and they should
19 proceed on their claims. Procedurally that -- to me
20 that's the right way to do it. We are not in that
21 context. I understand what the Court is saying about a
22 physical solution. I just disagree that procedurally
23 it's the correct way to do it.

24 THE COURT: You know, creating a defendant
25 class is a very difficult problem, unless somebody
26 steps forward and volunteers to, to represent that
27 class, an individual, and then obtaining counsel and
28 that's why I ultimately suggested that we go to a

1 plaintiffs class. I think that so far it is achieving
2 the result. There's no argument, a lot of discussion,
3 a lot of angst among a lot of people based on
4 uncertainties. We are moving along.

5 We, I think finally have jurisdiction over
6 all of the component parts of the valley that need to
7 be within the Court's jurisdiction. And now we are
8 trying to work through the adjudication process to get
9 a fair just resolve and determine what the facts are.

10 And I frankly, I think that we are charting
11 into some new ground here. I think Mr. McLachlan is
12 correct, there's not a lot of case law dealing with
13 this type of situation. But there needs to be, and
14 maybe that's what this case is going to be all about, I
15 don't know.

16 But in any event, there are other people who
17 want to argue.

18 MR. DAVIS: Your Honor, Mike Davis.

19 I'm not going to reiterate everything that's
20 in the pleadings, but I would respectfully disagree
21 with Mr. Dunn, this case has not, to this point been
22 tried as if it was consolidated. If it were we would
23 have all been able to participate in these discussions
24 with Justice Robie, we were not. We were excluded. We
25 have no clue what's happened there. And quite honestly
26 when discovery was submitted by Mr. Kalfayan and
27 others, we refused to respond because we were not
28 parties to their case, and they have not objected to

1 that because in fact they recognize that we are not
2 parties to their case.

3 I would simply like to make it clear from my
4 perspective we have never acted as if this was a de
5 facto consolidated action and the implication that it
6 is I think is significant.

7 THE COURT: Well, okay. I don't disagree
8 with you, that there's been no consolidation. But
9 there has been a joinder with regard to the
10 adjudication of the common issues that we've dealt with
11 at this point. Every party has participated or had an
12 opportunity to participate fully in the adjudication of
13 the jurisdictional bounds, the single aquifer and other
14 issues that have come up incident to those.

15 If you want to call that a de facto
16 consolidation fine, it's certainly not a technical or a
17 correct use of the phrase of art. I agree with you,
18 but that's where we are headed. And I want to make
19 sure that everybody has an opportunity to be heard with
20 regard to these issues.

21 And Mr. Davis, with regard to the settlement
22 conference that was discussed between the purveyors and
23 the two classes, I don't think that's inconsistent with
24 anything that has happened here. I think that's
25 perfectly appropriate.

26 The parties sometimes will sit down with a
27 third party, not all parties to the action are involved
28 in that discussion, to try to settle some aspect of the

1 case or their portions of the case, that happens very
2 commonly. I can't think of a large case that I've ever
3 handled where it hasn't happened. And I think it's a
4 very important thing to do. That has nothing to do
5 with the question of the ultimate adjudication of
6 rights here. Not every lawyer, not every party has a
7 right to join in discussions that several of the
8 parties may be having with a third party mediator, and
9 Justice Robie was a third party volunteer mediator. I
10 appreciated that very much. He's a very knowledgeable
11 person. I just might add that to the extent that this
12 case moves on in the manner which it is, he may well be
13 available to assist us in resolving other aspects of
14 this case and he certainly was very gracious in
15 participating -- the parties who did participate. That
16 has nothing to do with really the progress of the
17 litigation or any other aspect.

18 MR. DAVIS: Your Honor, my point simply was
19 that it is not, as Mr. Joyce was indicating, it was not
20 a significant issue if we are not parties to those
21 actions and their isolated actions, even though they've
22 been coordinated and their common issues have been
23 tried, not all of the issues in our opinion in those
24 two class cases are issues that are common to the rest
25 of the case that we are in.

26 THE COURT: Well, there's no question about
27 that.

28 MR. DAVIS: And so there's a reason that it

1 was not a big issue, but as Mr. Joyce indicated to us
2 it would be a huge issue upon the consolidation, which
3 I anticipate the Court is going to order today without
4 putting specificity as to how that's implemented. I
5 understand the Court is saying I'm going to order
6 transfer. I'm going to order consolidation. I simply
7 am not going to put the details on how that's going to
8 happen.

9 THE COURT: I can't at this point because
10 there are a multitude of causes of action some of which
11 really belong together and some of which do not, but
12 the declaratory relief actions and the quiet title is
13 really a form of that, it's an effaceable action,
14 anyway seems to me is essentially the same side of the
15 coin or different side of the same coin.

16 In any event, anybody else want to say
17 anything?

18 MR. KALFAYAN: Yes, your Honor.

19 If I had concern initially that complete
20 consolidation might somehow conflict with the
21 settlement that we have with the public water suppliers
22 in the U.S., however, earlier today I met with counsel,
23 and I believe we have worked that out so that, so that
24 that issue will no longer be there. So we just need to
25 put the settlement agreement together and put a motion
26 for you to approve that settlement.

27 THE COURT: Yeah. And I cannot and will not
28 make a final order of consolidation until I've heard

1 that motion to approve the settlement.

2 MR. DUNN: Your Honor, this is just a little
3 bit off topic, but it does -- all the things we are
4 doing here do bear upon the settlement agreement and
5 the terms that we are putting in there.

6 Down in Los Angeles, certainly I don't know
7 how the practice is going up here, but in some cases in
8 situations where parties are trying to move things
9 along we have done the preliminary approval process by
10 way of stipulation and order as opposed to scheduling a
11 hearing out 60 days. It's, actually I've done some
12 research for some of my colleagues in Central Civil
13 West it's been done a number of times this year, and I
14 was thinking about trying to do that in this case. I
15 don't know if your Honor has had any experience with
16 that, but if your Honor has some objection to that then
17 the public water suppliers, at least in my class and I
18 believe Mr. Kalfayan's class, is considering doing that
19 once we get things approved. And the concern there is
20 that if, possibly that the settlement process of the
21 few classes could hold -- continue to hold up the phase
22 three trial date.

23 And as a way to move to the -- 'cause the
24 thing that really matters is the fairness hearing, a
25 day where everybody gets to voice their objections.
26 And if we set that trial date at some point for let's
27 say the springtime Mr. Kalfayan and I are obligated to
28 -- with our firms to go to, you know, I don't know

1 50 days of expert deposition and go through all the
2 litigation, and do all the stuff that's going to happen
3 because the classes' rights have not been laid to rest.

4 So I wanted to raise the question if your
5 Honor had a strong objection to the -- at least the
6 theoretical possibility of doing the preliminary
7 approval by way of stipulation and order, then we can
8 do it the old fashioned way and set a hearing date.

9 THE COURT: Well, I would want the request
10 for preliminary approval, whether it will be by
11 stipulation or otherwise, to be set for a hearing so
12 that I can review it and determine whether or not it
13 should be preliminary approval granted, that means that
14 at least 20 days notice to do that. And I would urge
15 you to do that. I don't want to have it just an
16 in-chambers conference.

17 MR. DUNN: Well, your Honor, the hearing is
18 down in Los Angeles at the end of the month?

19 THE COURT: I think for the most part that's
20 what we would do. It is a Los Angeles case. We are
21 going to continue to use the electronic website for
22 filing orders made previously in Santa Clara County for
23 the most part in Los Angeles filing under those
24 circumstances.

25 MR. DUNN: Well -- does your Honor have a
26 plan as far as a designated date in which things can be
27 noticed? I assume you are probably going to be doing
28 some mediation or arbitration or something.

1 THE COURT: I'll be doing private work.

2 MR. DUNN: Just as a practical matter when
3 we want to set things, I understand Rowena said that we
4 will probably still be going through her. And I'm
5 curious if your Honor has in your head set particular
6 days of the week or how that would work for noticing
7 things.

8 THE COURT: Actually I have not. I think
9 that we tentatively set a hearing for November the
10 30th --

11 MR. DUNN: Yes.

12 THE COURT: -- on a couple of these matters
13 including the settlement approval I presume. That's a
14 Monday. I don't have a preference as to any particular
15 days. I think my schedule can be rather flexible until
16 it becomes inflexible. I don't know when that's going
17 to happen. You know, I would just ask you to call Mrs.
18 Walker and schedule whatever you want to schedule.
19 She'll be in touch with me and confirm it.

20 MR. KALFAYAN: Your Honor, I was told that
21 we'll need a week to complete the draft of the
22 settlement agreement. And the public supplier is going
23 to need about 45 days.

24 THE COURT: How many?

25 MR. KALFAYAN: 45 days.

26 MR. BUNN: For governing board approval.

27 MR. KALFAYAN: For governing board approval
28 and then we can set it for a hearing 20 days after

1 that.

2 THE COURT: Will not be ready -- you will
3 not be ready on November 30th.

4 MR. BUNN: I don't see that possible.

5 MR. DUNN: Not with 20 days notice. I think
6 realistically, so we are probably looking at the first
7 week of January or something or the last week of
8 December.

9 MR. SLOAN: Your Honor, William Sloan on
10 behalf of U.S. Borax. Would it be possible if we could
11 perhaps recess for five minutes just to discuss some
12 logistics and then reconvene?

13 THE COURT: Sure.

14 MR. SLOAN: Thank you.

15 THE COURT: In terms of a date for a hearing
16 on that motion I would like a firm date and schedule
17 it. And I would like to avoid repetitive trips to Los
18 Angeles as much as we can and to the extent that we
19 have to, but if we can set it for let's say the first
20 week in January, like January the 7th or 8th and do the
21 other motions at that time.

22 MR. JOYCE: Your Honor, can we hold that
23 date open.

24 THE COURT: Yes. I just want you to be
25 thinking about that date. Okay. Let's take a maybe
26 five minute recess.

27 MR. JOYCE: Ten if we could, your Honor.

28 (Whereupon, a break was taken.)

1 THE COURT: Do you have anything to report
2 to the Court?

3 MR. ZIMMER: Thank you for the chance to
4 talk among ourselves. Obviously there's several
5 different motions here on calendar here today.

6 I want to make it clear that it's our
7 understanding that the Court is granting the motion to
8 consolidate and that the Court is intending to seek
9 further details. We just want to make sure that's
10 decided one way or the other before we get into these
11 other motions.

12 THE COURT: Let me clarify where we are.

13 I am granting the motion to the extent that
14 I'm ordering transfer of the Kern, Riverside County
15 cases to the County of Los Angeles. I am indicating
16 and intend to consolidate. I want to schedule a
17 hearing on the form of that order for a date that
18 coincides with the request for preliminary approval of
19 the class settlements in the Willis cases. And
20 ordering that the parties meet and confer concerning
21 the form of the order of consolidation so that we
22 ensure that only the causes of action that should be
23 consolidated are consolidated. Some of the causes of
24 action one party may not have an interest in with
25 regard to the other causes of action. So I'm thinking,
26 for example, in terms of inverse condemnation, damages
27 caused by settlement, and the like.

28 MR. ZIMMER: I guess our question is, the

1 motion was a motion to consolidate there was no motion
2 to transfer.

3 THE COURT: I am doing that out of my own
4 motion.

5 MR. MARKMAN: That's not true, your Honor.
6 Since I drafted that it was a motion to transfer to the
7 extent a transfer hasn't already occurred and to
8 consolidate.

9 MR. ZIMMER: So the question is, is the
10 Court granting the motion to consolidate at this point?

11 THE COURT: As I have expressed it,
12 Mr. Zimmer?

13 MR. ZIMMER: The Court said it's granting a
14 motion to transfer, is the Court granting a motion to
15 consolidate?

16 THE COURT: It is my intent to sign an order
17 to consolidate once the transfer has been completed and
18 after counsel have had an opportunity to meet and
19 confer concerning the form of the order.

20 MR. ZIMMER: Is the Court intending to hear
21 the other motions that are currently scheduled today?

22 THE COURT: As I understand it the motion to
23 allocate costs was continued to November the 30th.
24 That will be continued again to the date of the
25 approval of the -- maybe in fairness here to -- 'cause
26 I don't know what's transpired with the appointment of
27 that expert at this point. The motion to dismiss the
28 first amended cross-complaint which was filed on

1 January 10th, I don't think I've seen any recent papers
2 concerning that request. The motion by Lancaster is
3 stay the case for six months, continue the trial
4 setting conference. We can take that up today if we
5 want to do that. The motion by Bolthouse to amend the
6 exhibits to its amended cross-complaint --

7 MR. ZIMMER: I put that off until the next
8 hearing.

9 THE COURT: Well, that's my point, I haven't
10 seen anything on that lately.

11 MR. ZIMMER: We can't make any decision
12 until we find out what's happening with consolidation.

13 THE COURT: The further motion to disqualify
14 the Blue (phonetic) Firm was reset to November the
15 30th, that will again be reset to a date that coincides
16 with the motion to approve, the next hearing date. I
17 think those are the only motions that were referred to
18 for today's hearing.

19 There was a request by the Willis class to
20 dismiss the Mohave Employment Utility District from the
21 second class action complaint on grounds that they
22 don't occupy any land or pump water within the Antelope
23 Valley. If there's no objection I'll grant that.

24 MR. KALFAYAN: Thank you, your Honor.

25 THE COURT: Anybody have any idea that
26 there's anything else pending?

27 MR. ZIMMER: So was the Court still
28 intending to take up anything today other than what

1 we've done so far?

2 THE COURT: We do have a case management
3 conference scheduled as we always do. I'd be happy to
4 take that and anything else that's appropriately before
5 the Court.

6 MR. ZIMMER: Can we have another five
7 minutes, your Honor.

8 THE COURT: Can you just step to the back of
9 the courtroom and see if you've got something else to
10 talk about.

11 (Whereupon, a break was taken.)

12 MR. ZIMMER: Thank you for the Court's
13 indulgence on that. I think we have nothing else
14 further to discuss, but we would request that nothing
15 further happen on the case substantively or in terms of
16 case management conference until there's a ruling on
17 the motion to consolidate.

18 THE COURT: You mean in the form of an
19 order?

20 MR. ZIMMER: I would say on the motion.
21 Unless the Court is saying that the motion is granted
22 today to consolidate, then my understanding is the
23 Court is going to look at what's going to be submitted
24 later and determine whether the Court is going to grant
25 it. If the Court is granting it today then we need to
26 know that.

27 THE COURT: Well, I think that the Court is
28 granting it today, but the exact form of that order and

1 what exactly is going to be consolidated is not clear
2 to me at this point. I want counsel to meet and confer
3 concerning that and provide the Court with some
4 proposals for how that consolidation should work. This
5 is as you know a very complicated complex case with a
6 series of pleadings that are somewhat disparate, but
7 which as I've indicated, have an accord that is common
8 to all of them. And I want to make sure that the form
9 of the order is appropriate to achieve the objectives
10 of litigation. And I can't do that without some
11 proposals.

12 So I think you understand what I think the
13 issues are with regard to that, we've had enough of a
14 discussion about that, make sure that what we do is
15 fair to all parties and that no party is prejudiced as
16 a result of what it is that we are attempting to
17 accomplish, which I think is to provide a benefit to
18 all the parties to the adjudication of the valley
19 water.

20 MR. MARKMAN: Your Honor, we have a few
21 requests when you went through your list of motions
22 pending. We would ask that you grant -- deny the
23 motion to dismiss the cross-complaint filed by Public
24 Water Suppliers and also deny the motion for a stay.

25 MR. SLOAN: Your Honor, before you even act
26 on that several of the parties have prepared a 170.6
27 challenge. We believe that upon consolidation that
28 gives us the right to exercise the 170.6. I'd like

1 permission to provide it at this time to the clerk.

2 THE COURT: You certainly may file that.

3 MR. SLOAN: I also have additional copies
4 here for everybody.

5 MR. KALFAYAN: Your Honor, we haven't seen
6 that. Can I get a copy.

7 THE COURT: Would you like to set that for a
8 hearing?

9 MR. SLOAN: We don't believe it requires a
10 hearing.

11 THE COURT: It's going to have a hearing.

12 MR. SLOAN: If your Honor would like to set
13 a date.

14 THE COURT: When would you like to have a
15 hearing?

16 MR. LEININGER: Your Honor, this is Mr.
17 Leininger. We couldn't hear Mr. Sloan's comments on
18 the motion.

19 MR. SLOAN: I indicated that several of the
20 parties are filing a 170.6.

21 MR. LEININGER: I'm still having
22 difficulty --

23 MR. SLOAN: Several of the parties are
24 filing a 170.6 preemptory challenge to disqualify the
25 judge. It's our understanding upon consolidation the
26 parties are afforded a renewed right to exercise that
27 challenge. And I believe we are now going to set a
28 hearing for that.

1 THE COURT: All right. When would you like
2 to have a hearing? We can do that do that up here.
3 Would you like to do that within ten days?

4 MR. BUNN: If we can have that on a Monday
5 or Tuesday. I'm currently in trial on Wednesdays,
6 Thursdays or Fridays.

7 MR. SLOAN: So your Honor knows, I'm not
8 available Monday or Tuesday of next week.

9 MR. BUNN: I'm sorry. Preferably a Tuesday
10 if that would please the Court.

11 THE COURT: How about October 27th?

12 MR. SLOAN: Is that two weeks from today?

13 MR. BUNN: Yes, your Honor, that's fine.

14 MR. MARKMAN: Would that be at nine or ten?

15 THE COURT: Let's make it at nine o'clock.

16 MR. EVERTS: Your Honor, we can appear by
17 court call.

18 THE COURT: Now I do want some briefing by
19 anybody who is opposed to the motion. And I'd like an
20 opposition filed by the 20th. Next Tuesday seven days.

21 MR. Defense 2: Yes, your Honor.

22 THE COURT: And response no later than --
23 let's make the opposition the 19th and have the
24 response no later than the 22nd. I should say the
25 reply. Okay.

26 MR. FIFE: Your Honor, we are hearing that
27 up here. Several of us catch a flight out of Burbank
28 that gets here just after nine. Can we set it for

1 ten o'clock.

2 THE COURT: I really don't think I can do
3 that under the circumstances. The nine o'clock has to
4 be it so if you are a few minutes late I'll understand.

5 MR. KALFAYAN: Your Honor, I've conferred
6 with the Public Water Suppliers. Should we reserve
7 January 7th or 8 for the motion?

8 THE COURT: I think that's a smart thing to
9 do.

10 MR. KALFAYAN: January 8th.

11 THE COURT: Well, that's a Friday that
12 sounds about right. January the 8th reserve it.

13 MR. KALFAYAN: Yes, your Honor.

14 MR. EVERTZ: Doug Evertz for the City of
15 Lancaster with the Court's permission we agree to have
16 our motion stayed and continued to that particular date
17 too.

18 THE COURT: Okay.

19 MR. EVERTZ: If you want argument I'd be
20 happy to do that.

21 THE COURT: All right. All pending motions
22 with exception to the hearing on the 170.6 will be
23 reset to January 8th.

24 Okay. Thank you very much.

25

26 (Whereupon, the proceedings concluded.)

27

28

1 STATE OF CALIFORNIA)
2 COUNTY OF SANTA CLARA)

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I, Alicia Plancarte, Certified Shorthand Reporter, do hereby certify:

That I am the reporter, duly appointed and sworn, who reported the above and foregoing proceedings at the time and place therein stated.

That I reported the said proceedings; and that the foregoing pages are a full, true, complete and correct transcript of my shorthand notes taken at said time and place to the best of my ability.

I further certify that I have complied with CCP 237 (A) (2) in that all personal juror identifying information has been redacted, if applicable.

DATED: This _____ day of _____, 2009

ALICIA PLANCARTE
CERTIFIED SHORTHAND REPORTER
NO. 12161

Exhibit 11

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

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16 Coordination Proceeding
Special Title (Rule 1550(b))

17 **ANTELOPE VALLEY GROUNDWATER CASES**

18 Included Actions:

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

22 **Los Angeles County Waterworks District No. 40 v.**
23 **Diamond Farming Co.**
Superior Court of California, County of Kern,
Case No. S-1500-CV-254-348

24 **Wm. Bolthouse Farms, Inc. v. City of Lancaster**
25 **Diamond Farming Co. v. City of Lancaster**
26 **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)

Judicial Council Coordination
Proceeding No. 4408

Assigned to
The Honorable Jack Komar

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

1 *List of Counsel (Continued):*

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28 GROUNDWATER AGREEMENT ASSOCIATION
("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.

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
WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

5
6 By: William M. Sloan
William M. Sloan
7 Attorneys for U.S. BORAX, INC.

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

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

10
11 By: _____
Richard G. Zimmer
12 Attorneys for BOLTHOUSE PROPERTIES,
13 LLC and WM. BOLTHOUSE FARMS, INC.

14 Executed this 12th day of October at
15 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

16
17 By: _____
Bob H. Joyce
18 Attorneys for DIAMOND FARMING
19 COMPANY, a California corporation,
20 CRYSTAL ORGANIC FARMS, a limited
liability company, GRIMMWAY Enterprises,
Inc., and LAPIS LAND COMPANY, L.L.C.

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

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

23
24 By: _____
Michael D. Davis
25 Attorneys for SERVICE ROCK PRODUCTS
26 CORPORATION, as successor-in-interest to
27 Owl Properties, Inc., SHEEP CREEK WATER
MUTUAL GROUP

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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.

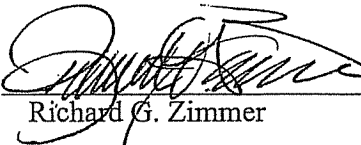
Executed this 12th day of October at San Francisco, California.

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

By: _____
William M. Sloan
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
WILLIAM M. SLOAN
MORRISON & FOERSTER LLP

5
6 By: _____
William M. Sloan
7 Attorneys for U.S. BORAX, INC.

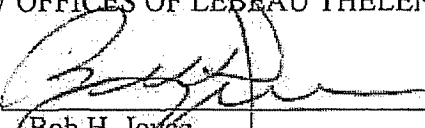
8 Executed this 12th day of October at
9 Bakersfield, California.

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

10
11 By: _____
Richard G. Zimmer
12 Attorneys for BOLTHOUSE PROPERTIES,
13 LLC and WM. BOLTHOUSE FARMS, INC.

14 Executed this 12th day of October at
15 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

16
17 By:  _____
Bob H. Joyce
18 Attorneys for DIAMOND FARMING
19 COMPANY, a California corporation,
20 CRYSTAL ORGANIC FARMS, a limited
liability company, GRIMMWAY Enterprises,
Inc., and LAPIS LAND COMPANY, LLC.

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

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

23
24 By: _____
Michael D. Davis
25 Attorneys for SERVICE ROCK PRODUCTS
26 CORPORATION, as successor-in-interest to
27 Owl Properties, Inc., SHEEP CREEK WATER
28 COMPANY, INC., and A.V. UNITED
MUTUAL GROUP

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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
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 Executed this 12th day of October at Santa
2 Barbara, California.

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

3
4 

5 By: _____

Michael T. Fife

6 Attorneys for the ANTELOPE VALLEY
7 GROUNDWATER AGREEMENT
8 ASSOCIATION ("AGWA")
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1 PROOF OF SERVICE

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I
4 am over the age of eighteen years.

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

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct and that this document was executed at San Francisco, California, on October 13,
12 2009.

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14
15 Catherine L. Berté
16 (typed)


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28 (signature)

Exhibit 12

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

Coordination Proceeding
Special Title (Rule 1550(b))

ANTELOPE VALLEY GROUNDWATER CASES

Included Actions:

Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co.
Superior Court of California
County of Los Angeles, Case No. BC 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

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 Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Willis v. Los Angeles County Waterworks District
No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 364 553

Wood v. Los Angeles County Waterworks District
No. 40
Superior Court of California, County of Los
Angeles, Case No. BC 391869

Judicial Council Coordination
Proceeding No. 4408

For Court's Use Only:
Santa Clara County Case No.
1-05-CV-049053
(for E-Posting/E-Service
Purposes Only)

Date/Time: Tuesday, October 13, 2009 (10:00 a.m.)

Location: Santa Clara County Superior Court 191 N. 1st Street, Department 17C
San Jose, CA 95113

Present: Hon. Jack Komar, Judge R. Gutierrez, Clerk

*Antelope Valley Groundwater Cases (JCCP 4408)
Los Angeles County Superior Court, Case No. BC 325 201
Tuesday, October 13, 2009 (10:00 am) / Hon. Jack Komar*

S:\CRclk\Dept 17 Komar\Antelope Valley\2009-10-13 MO.doc

MINUTE ORDER RE:

(1) MOTION BY THE PUBLIC WATER SUPPLIERS TO TRANSFER AND TO CONSOLIDATE CASES FOR ALL PURPOSES ALL MATTERS PRESENTLY PENDING UNDER JUDICIAL COUNCIL PROCEEDING NO. 4408 FROM THE SUPERIOR COURTS OF RIVERSIDE COUNTY, LOS ANGELES COUNTY AND KERN COUNTY, SPECIALLY ASSIGNED TO THE HONORABLE JACK KOMAR (ATTY WHITNEY G. MCDONALD)

OPERATIVE COMPLAINTS:

Case Name	Filed in (County)	Case Number
<i>Wm. Bolthouse Farms v. City of Lancaster</i>	Riverside	RIC 353840
<i>Diamond Farming Co. v. City of Lancaster</i>	Riverside	RIC 344436
<i>Diamond Farming Co. v. Palmdale Water District</i>	Riverside	RIC 344668
<i>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.</i>	Kern	S-1500-CV 254-348
<i>Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.</i>	Los Angeles	BC 325 201
<i>Willis v. Los Angeles County Waterworks District No. 40</i>	Los Angeles	BC 364 553
<i>Wood v. Los Angeles County Waterworks District No. 40</i>	Los Angeles	BC 391 869

Motion was previously heard on August 17, 2009 and continued for further hearing on October 13, 2009 at 10:00 a.m. in Department 17, Santa Clara County.

Meet and confer letter is to be posted by August 25, 2008.

Supplemental materials to the motion are to be filed by September 8, 2009.

Supplemental oppositions are to be filed by September 18, 2009.

Responses to oppositions are to be filed by September 23, 2009.

The Motion was heard and GRANTED. Counsel are ordered to meet and confer regarding the form of the Order to Consolidate.

(2) CONTINUED HEARING ON MOTION BY PLAINTIFF RICHARD WOOD FOR ORDER ALLOCATING COSTS OF COURT-APPOINTED EXPERT WITNESS (ATTY MICHAEL MCLACHLAN)

This matter was previously set on August 17, 2009 and September 14, 2009. **Update:** On October 1, 2009, the Court continued this matter to November 30, 2009, at the moving party's request.

Matter was continued for further hearing on January 8, 2010 in Los Angeles.

(3A) CONTINUED HEARING ON THE MOTION BY DEFENDANTS TO DISMISS THE PUBLIC WATER SUPPLIERS' FIRST AMENDED CROSS-COMPLAINT FILED ON JANUARY 10, 2007; and (3B) JOINDER BY CROSS-DEFENDANT ANTELOPE VALLEY JOINT UNION HIGH SCHOOL DISTRICT (ATTY WILLIAM M. SLOAN)

This is a continued hearing from August 17, 2009.

Matter was heard and continued for further hearing on January 8, 2010 in Los Angeles.

(4) MOTION BY CITY OF LANCASTER, ET AL. TO STAY PROCEEDINGS FOR SIX MONTHS, OR ALTERNATIVELY, CONTINUE TRIAL SETTING CONFERENCE (ATTY DOUGLAS J. EVERTZ)

This is a continued hearing from August 17, 2009.

Matter was heard and continued for further hearing on January 8, 2010 in Los Angeles.

(5) CONTINUED HEARING ON REQUEST BY BOLTHOUSE TO AMEND THE EXHIBITS TO ITS AMENDED CROSS-COMPLAINT (ATTY RICH ZIMMER)

This is a continued hearing from August 17, 2009.

At the hearing on June 19, 2009, the Court set forth a briefing schedule for the above motion. On August 17, 2009 the Court noted that formal moving papers have not yet been filed.

Matter was heard and continued for further hearing on January 8, 2010 in Los Angeles.

(6) CONTINUED HEARING ON THE MOTION BY PLAINTIFF WOOD FOR AN ORDER DISQUALIFYING THE LAW FIRM OF LEMIEUX & O'NEIL (ATTY MICHAL MCLACHLAN)

This matter was previously heard on July 24, 2009 and taken under submission by the Court until August 17, 2009 to allow opposing party to file documents under seal as per the Court's comments on the record. The matter was taken up on the Court's calendar on August 17, 2009 and continued for further hearing on October 13, 2009 at 10:00 a.m. in Department 17, Santa Clara County. **Update:** On October 1, 2009, the Court continued this matter to November 30, 2009, at the moving party's request.

Matter was continued for further hearing on January 8, 2010 in Los Angeles.

(7) TRIAL SETTING CONFERENCE/FURTHER CASE MANAGEMENT CONFERENCE

This is a continued hearing from August 17, 2009.

At the hearing held on July 24, 2009, the Court referred counsel to Justice Robie, through his secretary, Linda Moore, at 916-651-7254, for interested parties to participate in a settlement conference with Justice Robie.

The Request by the Willis Class to Dismiss Without Prejudice the Mojave Public Utility District from the Second Amended Class Action Complaint, received on September 29, 2009, was heard and GRANTED.

A hearing on the Motion by U.S. Borax Inc., Bolthouse Properties, LLC and Wm. Bolthouse Farms, Inc. for a Peremptory Challenge (C.C.P. §170.6) was set for hearing on October 27, 2009 at 9:00 a.m. in San Jose. Oppositions to the Motion are due on October 19, 2009; replies are due on October 22, 2009.

PARTIES/ATTORNEYS OF RECORD: SEE COURTCALL ROLL CALL LIST ATTACHED

City of Lancaster	Douglas Evertz	
County of Los Angeles Waterworks District #40	Jeffrey Dunn	
Richard Wood	Michael McLachlan	
Quartil Water District	Bradley Weeks	
City of Palmdale	James L. Markman	
Antelope Valley United Water Group	Michael D. Davis	
U.S. Borax	William Sloan	
Antelope Valley Groundwater Agreement Association	Michael Fife	
Los Angeles Waterworks 40	Michael Moore	
Rebecca Willis	Ralph Kalfayan	
Palmdale Water District	Thomas Bunn	
Antelope Valley Kern Water Agency	William J. Brunick	
Diamond Farming, et al	Bob Joyce	
Bolthouse Farms	Richard Zimmer	

CourtCall® Appearance Calendar

October 2009

1st Revision 10/12/2009 05:32 PM

13 Tuesday

17C Judge Jack Komar

Santa Clara County Superior Court

10:00 AM Dial: (866) 708-0801

Time	Case Information	Attorney Information
	Case #: 105CV049053 Case Name: Antelope Valley Groundwater Litigation (JCCP 4408) Proceeding Type: Motion	Firm: Alston & Bird, LLP- Los Angeles Phone: (213) 576-1000 Contact: Tammy L. Jones ✓ For: Defendant(s), Northrop Grumman, Enxco Development, Palmdale Hills Property
		Firm: Attorney General's Office Phone: (916) 327-7875 Contact: Michael L. Crow For: Defendant(s), State of California
		Firm: Bartkiewicz Kronick & Shanahan Phone: (916) 446-4254 Contact: Stephen M. Siptroth ✓ For: Cross-Defendant(s), Copa De Oro Land Company
		Firm: Brownstein Hyatt Farber Schreck Phone: 805-963-7000 Contact: Bradley J. Herrema For: Defendant(s), Antelope Valley Groundwater Agreement Association (Agwa)
		Firm: California Water Service Company Phone: 310-257-1433 Contact: John S. Tootle For: Defendant(s), Antelope Valley
		Firm: Charlton Weeks LLP Phone: 661-265-0969 Contact: Bradley T. Weeks For: Interested Party, Quartz Hill Water District
		Firm: Ellison Schneider & Harris LLP Phone: 916-447-2166 Contact: Christopher M. Sanders For: Defendant(s), Los Angeles County Sanitation Districts
		Firm: Fagen Friedman Fulfroost LLP Phone: (323) 330-6300 Contact: Anna Miller ✓ For: Cross-Defendant(s), Antelope Valley Jcint Union High School District.

CourtCall® Appearance Calendar

October 2009

1st Revision 10/12/2009 05:32 PM

13 Tuesday

17C Judge Jack Komar

Santa Clara County Superior Court

10:00 AM Dial: (866) 708-0801

Time	Case Information	Attorney Information
		Firm: Hanna & Morton LLP Phone: 213-430-2505 ext. 516 Contact: Edward S. Renwick For: Cross-Defendant(s), Wagas Land Company, LLC.
		Firm: John Ukkestad - Client Phone: (661) 272-0015 Contact: John Ukkestad For: Client, John Ukkestad
		Firm: Kuhs & Parker Phone: (661) 322-4004 Contact: Robert G. Kuhs For: Defendant(s), Tejon Ranch Corporation
		Firm: Lemieux & O'Neill Phone: 805-495-4770 Contact: Keith W. Lemieux, Jr. For: Defendant(s), Little Rock Creeks et al
		Firm: Lewis Brisbois Bisgaard & Smith Phone: 213-580-3902 Contact: Melissa McKeith For: Cross-Complainant(s), Anaverde, LLC
		Firm: Meserve, Mumper & Hughes, LLP Phone: 213-620-0300 Contact: Cliff Melnick ✓ For: Defendant(s), Cameron Properties
		Firm: Mike Floyd - Client - Phone: (661) 943-3201 ✓ Contact: Mike Flood ✓ For: Client, Mike Floyd
		Firm: Richard A. Wood - Client Phone: 661-946-1164 Contact: Richard A. Wood For: Client, Richard Wood
		Firm: SmithTrager LLP Phone: (949) 752-8971 Contact: Susan M. Trager For: Cross-Defendant(s), Phelan Pinion Hills Community

CourtCall® Appearance Calendar

October 2009

1st Revision 10/12/2009 05:32 PM

13 Tuesday

17C Judge Jack Komar

Santa Clara County Superior Court

10:00 AM Dial: (866) 708-0801

Time	Case Information	Attorney Information
		Firm: Southern California Edison Company Phone: 626-302-3712 Contact: Amy M. Gantvoort ✓ For: Representing, Southern California Edison Company
		Firm: U.S. Department of Justice Phone: 303-844-1364 Contact: R. Lee Leininger ✓ For: Defendant(s), United States
		Firm: Young Wooldridge LLP Phone: 661-327-9661 ext. 161 Contact: Scott K. Kuney ✓ For: Defendant(s), Van Dam & Antelope Valley