

1 BEST BEST & KRIEGER LLP
ERIC L. GARNER, Bar No. 130665
2 JEFFREY V. DUNN, Bar No. 131926
STEFANIE D. HEDLUND, Bar No. 239787
3 5 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614
4 TELEPHONE: (949) 263-2600
TELECOPIER: (949) 260-0972
5 Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
6 DISTRICT and LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

**EXEMPT FROM FILING FEES
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7 OFFICE OF COUNTY COUNSEL
8 COUNTY OF LOS ANGELES
RAYMOND G. FORTNER, JR., Bar No. 42230
9 COUNTY COUNSEL
FREDERICK W. PFAEFFLE, Bar No. 145742
10 PRINCIPAL DEPUTY COUNTY COUNSEL
500 WEST TEMPLE STREET
11 LOS ANGELES, CALIFORNIA 90012
TELEPHONE: (213) 974-1951
12 TELECOPIER: (213) 458-4020
Attorneys for Cross-Complainant LOS ANGELES
13 COUNTY WATERWORKS DISTRICT NO. 40

14 [See Next Page For Additional Counsel]

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES – CENTRAL DISTRICT
17

18 **ANTELOPE VALLEY
GROUNDWATER CASES**

19 Included Actions:
20 Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
21 Court of California, County of Los
Angeles, Case No. BC 325201;

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

25 Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
27 California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668
28

Judicial Council Coordination No. 4408
CLASS ACTION
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar

CASE MANAGEMENT STATEMENT

1 White Fence Farms Mutual Water Co.,
2 Inc., El Dorado Mutual Water Co., West
3 Side park Mutual Water Co., Shadow
4 Acres Mutual Water Co., Antelope Park
5 Mutual Water Co., Averydale Mutual
6 Water Co., Sundale Mutual Water Co.,
7 Evergreen Mutual Water Co., Aqua J
8 Mutual Water Co., Bleigh Flat Mutual
9 Water Co., Colorado Mutual Water Co.,
10 Sunnyside Farms Mutual Water Co., Land
11 Projects Mutual Water Co., and Tierra
12 Bonita Mutual Water Co.; collectively
13 known as A.V. United Mutual Group,

14 Cross-Complainants,

15 v.

16 California Water Service Company; City of
17 Lancaster; City of Palmdale; Littlerock
18 Creek Irrigation District; Los Angeles
19 County Water Works District No. 40;
20 Palmdale Water District; Rosamond
21 Community Services District; Palm Ranch
22 Irrigation District; and Quartz Hill Water
23 District; and ZOES 1-200, inclusive,

24 Cross-Defendants.

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LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Douglas J. Evertz, Bar No. 123066
250 Main Street, Suite 600
Irvine, CA 92614
(949) 737-3700 (916) 251-5830 fax
Attorneys for City of Lancaster

RICHARDS WATSON & GERSHON
James L. Markman, Bar No. 43536
Steven Orr, Bar No. 136615
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
(213) 626-8484 (213) 626-0078 fax
Attorneys for City of Palmdale

LEMIEUX & O'NEILL
Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Ste. 201
Westlake Village, CA 91361
(805) 495-4770 (805) 495-2787 fax
Attorneys for Littlerock Creek Irrigation District and
Palm Ranch Irrigation District

LAGERLOF SENEAL GOSNEY & KRUSE
Thomas Bunn III, Bar No. 89502
301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
(626) 793-9400 (626) 793-5900 fax
Attorneys for Palmdale Water District and Quartz
Hill Water District

CALIFORNIA WATER SERVICE COMPANY
John Tootle, Bar No. 181822
2632 West 237th Street
Torrance, CA 90505
(310) 257-1488; (310) 325-4605-fax

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STATUS OF MEETINGS WITH SETTLEMENT FACILITATOR

As previously reported, the County of Los Angeles Waterworks District No. 40 agreed to contract with Mr. Bill Dendy to serve as a settlement facilitator to assist the parties' settlement negotiations. He has conducted several settlement meetings with party representatives and their legal counsel. He has met or spoken privately with individual parties as well. As of the date of this Statement, a further meeting with party representatives and legal counsel is scheduled for May 9, 2008 in Burbank.

STATUS OF TECHNICAL COMMITTEE MEETINGS

There is an informal group of consultants commonly known as the "Technical Committee." It consists of experts retained by various landowner parties, public water suppliers, State of California, and the United States, respectively. They have been meeting to share information and coordinate analysis of certain conditions in the Basin.

STATUS OF CLASS ACTION CERTIFICATION

In order to understand the status of the class certification issue, a brief review of the court hearings and case filings is necessary.

During the November 13, 2006, Case Management Conference, the Court proposed the use of a class action mechanism to obtain jurisdiction over landowner parties within the Adjudication Area. (Exhibit A, p. 8:7-11.) Specifically, the Court suggested the use of a defendant class of property owners. (Exhibit A, p.13:23-28.) Accordingly, the Public Water Suppliers filed a motion to certify a defendant class on January 10, 2007. (Exhibit B.)

On January 11, 2007, a landowner party, Ms. Rebecca Willis, filed a plaintiff's class action complaint in Los Angeles County Superior Court. On March 12, 2007, the Willis class action complaint was coordinated with the pending proceedings. With the filing and coordination of the Willis class action, the parties and the Court changed their focus and effort to certifying a plaintiff class action. (Exhibit C, pp. 13-14; and p. 16:20-28.)

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1 During the March 12, 2007, Case Management Conference, the Court explored the use of
2 a single class with two sub-classes. Specifically, the Court suggested a “sub class of all overlying
3 owners who are outside of water service districts and who are not pumping and have not pumped”
4 and a second sub-class of “individuals who intend to pump.” (Exhibit D, pp.10-11:11-28.)

5 At the following Case Management Conference on April 16, 2007, the Public Water
6 Suppliers proposed a class structure that included two sub-classes as previously suggested by the
7 Court. Sub-class A consisted of “dormant landowners who have not operated a groundwater well
8 within five years immediately preceding October 9, 1999.” (Exhibit E, p. 3:2-7.) Sub-class B
9 consisted of all landowners within the Adjudication Area “with groundwater wells on their land
10 who are not members of sub-class A.” (Exhibit E, p. 3:9-11.)

11 At the following Case Management Conference on May 21, 2007, the Public Water
12 Suppliers reported that they were unable to find a defendant class representative and legal counsel
13 to represent a “pumper group.” (Exhibit F, p.21:7-16.) Because a class representative for a small
14 pumper group could not be located, other class action alternatives were explored by the Court and
15 the parties. The Public Water Suppliers suggested the Court certify a class of non-pumpers and
16 pumpers for limited purposes because certain legal and factual issues are common to both
17 pumpers and non-pumpers. (Exhibit F, pp. 25:10-26; 26:15-26.) The Court responded that this
18 proposal was a “good idea” and wanted to hear from other parties regarding a class of non-
19 pumpers and pumpers certified for limited common issues of law and fact. (Exhibit F, p. 28:2-6.)
20 Several parties expressed concerns that a class of pumpers and non-pumpers could create
21 conflicts within the class.

22 Over the next several months efforts to locate a defendant class representative were
23 unsuccessful. At the July 20, 2007 the Court again considered the idea of a single class: “It also
24 seems to me given the difficulty of finding a defendant class representative, if it is possible to
25 create a plaintiff’s class or a cross-complainant’s class, that it would certainly make for more
26 efficient management and provide a better level of justice.” (Exhibit G, p.14:4-9.) The Court then
27 directed parties to confer with the Willis class counsel to develop a plaintiff class definition that
28 could include both pumpers and non-pumpers. (Exhibit G, p.16:20-26.)

1 The Public Water Suppliers and Willis class counsel failed to reach an agreement on a
2 single class definition and Plaintiff Willis filed a motion to certify a class of non-pumpers.
3 Following the Court's suggestions, the Public Water Suppliers then filed a statement supporting a
4 modified Willis class that would include both non-pumpers and pumpers. (Exhibit H.) Prior to
5 the hearing, Plaintiff Willis sought to withdraw her motion for class certification on the grounds
6 that the Class was not ascertainable and the class modified by the Public Water Suppliers was
7 overbroad. (Exhibit I.)

8 At the August 20, 2007, Case Management Conference, the Court urged counsel for
9 Plaintiff Willis to reconsider withdrawing the motion for certification of a non-pumper class. At
10 the Courts urging, counsel for Plaintiff Willis decided not to withdraw the class certification
11 motion and agreed to work with the Public Water Suppliers to submit an order to certify a non-
12 pumper class. (Exhibit J, p.38:7-12.) The Court again acknowledged the importance of the class
13 action mechanism to obtain jurisdiction over the dormant parties and facilitate a binding
14 adjudication. (Exhibit J, p. 22:6-10.)

15 On September 11, 2007, the Court signed the order certifying a plaintiffs class consisting
16 of non-pumpers. (Exhibit K.)

17 At the December 18, 2007, Case Management Conference, the Court again considered the
18 possibility of a plaintiff class consisting of both pumpers and non-pumpers. The Court had a
19 lengthy discussion about whether potential conflicts exist within a class of pumpers and non-
20 pumpers that would prevent certification for limited common issues of a class of pumpers and
21 non-pumpers. (Exhibit L , December 18, 2007.) No conclusion was reached regarding
22 certification of a non-pumper and pumper class and the Court instructed Willis class counsel to
23 proceed with a form of notice for the certified Willis class.

24 During the January 14, 2008, Case Management Conference, the Public Water Suppliers
25 suggested that a class of non-pumpers and small-pumpers be certified for limited common factual
26 and legal issues including Basin characteristics and Basin yield. (Exhibit M, pp. 12-13:21-6.)
27 The Court acknowledged the common interests of non-pumpers and small-pumpers on certain
28 limited issues:

1 The Court is interested in a practical way of obtaining jurisdiction
2 over the owners of land within the valley so that we can go through
3 a normal progression of litigation. We can get a definition of the
4 valley, characteristics. We can determine what the yield is. We can
5 put the parties in a position where they can either seek an
6 adjudication or try to settle the case among themselves. And it
7 seems to me there are large common interest among the
8 nonpumpers as well as the small pumpers, and the large pumpers as
9 opposed to those who are supplying, or “purveying,” as you put it,
10 water.

11 (Exhibit M, p. 25:10-20.)

12 The Court further concluded that it was “possible for Mr. Zlotnick to represent non-pumpers and
13 small pumpers up to a point.” (Exhibit M, p.30:4-5.) As such, the Court directed the Public
14 Water Suppliers to file a motion to amend the existing class certification order to include the
15 remaining pumper parties for limited factual and legal issues common to all landowner parties
16 regardless of their pumping status. (Exhibit M, p.30:1-2.)

17 Accordingly, the Public Water Suppliers filed a motion to modify the existing Class
18 Certification Order to include both non-pumpers and pumpers for limited common issues of law
19 and fact. (Exhibit N.) At the Court’s hearing on the Motion, the Court recognized that this
20 approach was necessary to get the case at issue:

21 I think this is the only way I could think of to get this case moving.
22 And I think that it is with a clear understanding that the Court
23 recognizes that there would be a very clear conflict between a
24 pumping class, however small, and a nonpumping class. And
25 certainly within the pumping class there will be conflicts of interest
26 between the various pumpers at various levels. But it seems to me
27 that is something the Court can address through a proper
28 adjudication process when we have ascertained who those people
are.

(Exhibit O, p.19:2-11.)

The Public Water Suppliers motion to modify the existing plaintiff class sought to strike the non-
pumping language of the previously certified class, so that the class would include all
landowners, regardless of whether they pumped or did not pump. The Court stated that the
revised language would read, “ All Private, i.e., nongovernmental persons and entities that own
real property within the Basin as Adjudicated. . . .” (Exhibit O, p. 21:3-13.) The Court further
directed the Public Water Suppliers to exclude from the Class the property owners within the

1 cities of Palmdale and Lancaster, as well as any parties who have a water service agreement or
2 application. (Exhibit O, p.30:6-23.)

3 The Court *granted* the motion to modify the existing Plaintiff Class Certification Order,
4 with Court modifications. (Exhibit O, p. 45:7-17.) The Court further directed the Public Water
5 Suppliers to draft and submit a proposed Order. (Exhibit O, p.30:24-28.)

6 The Public Water Suppliers obtained a Court transcript from the hearing which was used
7 to prepare the proposed Order. The proposed Order was also sent to various other attorneys
8 including attorneys for the Class and for the United States. Based on the Court transcript, the
9 Public Water Suppliers submitted a proposed Order.

10 At a March 28, 2008, telephonic hearing the Court stated the proposed order by the Public
11 Water Suppliers was “inconsistent with the direction of the Court” and that it was the Court’s
12 intent to “certify a class of property owners who were non-pumpers,” although the Court had
13 previously *granted* the motion to amend the class to include all landowners for certain limited
14 purposes. (Exhibit P, March 28, 2008 transcript p. 7:13-20.)

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1 At the May 5, 2008, Case Management Conference, the Public Water Suppliers
2 respectfully request direction from the Court on how it wishes to proceed regarding class
3 certification and obtaining jurisdiction over small pumpers in the Adjudication Area. The Public
4 Water Suppliers remind the Court that the only way to require a landowner to return the class
5 notice form, or else be deemed a non-pumper, is first to acquire jurisdiction over the landowner
6 by including all landowners in the class

7
8 Dated: May 1, 2008

BEST BEST & KRIEGER LLP

9
10 By 

ERIC L. GARNER
JEFFREY V. DUNN
STEFANIE D. HEDLUND
Attorneys for Cross-Complainants
ROSAMOND COMMUNITY SERVICES
DISTRICT and LOS ANGELES
COUNTY WATERWORKS DISTRICT
NO. 40

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

PROOF OF SERVICE

I, Kerry V. Keefe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, California 92614. On May 1, 2008, I served the within document(s):

CASE MANAGEMENT STATEMENT

- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Irvine, California addressed as set forth below.
- by causing personal delivery by ASAP Corporate Services of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- I caused such envelope to be delivered via overnight delivery addressed as indicated on the attached service list. Such envelope was deposited for delivery by Federal Express following the firm's ordinary business practices.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on May 1, 2008, at Irvine, California.


Kerry V. Keefe