

“EXHIBIT B”

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

**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

11 **OFFICE OF COUNTY COUNSEL**
12 **COUNTY OF LOS ANGELES**
13 RAYMOND G. FORTNER, JR., Bar No. 42230
14 COUNTY COUNSEL
15 FREDERICK W. PFABFFLE, Bar No. 145742
16 PRINCIPAL DEPUTY COUNTY COUNSEL
17 500 WEST TEMPLE STREET
18 LOS ANGELES, CALIFORNIA 90012
19 TELEPHONE: (213) 974-1901
20 TELECOPIER: (213) 458-4020
21 Attorneys for Cross-Complainant LOS ANGELES
22 **COUNTY WATERWORKS DISTRICT NO. 40**

23 [See Next Page For Additional Counsel]

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

26 **ANTELOPE VALLEY**
27 **GROUNDWATER CASES**
28 **Included Actions:**
Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Los
Angeles, Case No. BC 325201;
Los Angeles County Waterworks District
No. 40 v. Diamond Farming Co., Superior
Court of California, County of Kern, Case
No. S-1500-CV-254-348;
Wm. Bolthouse Farms, Inc. v. City of
Lancaster, Diamond Farming Co. v. City of
Lancaster, Diamond Farming Co. v.
Palmdale Water Dist., Superior Court of
California, County of Riverside, Case Nos.
RIC 353 840, RIC 344 436, RIC 344 668

Judicial Council Coordination No. 4408
Santa Clara Case No. 1-05-CV-049053
Assigned to The Honorable Jack Komar
[Code Civ. Proc., § 382]

**PUBLIC WATER SUPPLIERS' NOTICE
OF MOTION AND MOTION FOR CLASS
CERTIFICATION; DECLARATIONS OF
MARK WILDERMUTH AND JEFFREY V.
DUNN**

Hearing:
Date: March 12, 2007
Time: 1:30 p.m.
Dept.: 1

GRANGE32784.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

PAGE(S)

I. INTRODUCTION 5

II. CALIFORNIA HAS A PUBLIC POLICY THAT ENCOURAGES
USE OF THE CLASS ACTION DEVICE EVEN IF CLASS MEMBERS
HAVE INDIVIDUAL CLAIMS 5

III. BOTH FEDERAL AND CALIFORNIA COURTS HAVE UTILIZED
THE CLASS ACTION DEVICE TO FACILITATE THE RESOLUTION
OF WATER RIGHTS CASES 7

IV. DEFENDANT CLASS ACTIONS ARE DIFFERENT FROM PLAINTIFF
CLASS ACTIONS IN THAT THE DEFENDANT CLASS REPRESENTATIVE
IS SELECTED BY THE COURT OFTEN OVER THE OBJECTION
OF THE DEFENDANT CLASS REPRESENTATIVE 9

V. THE PROPOSED CLASS MEETS CALIFORNIA'S CLASS
CERTIFICATION REQUIREMENTS 10

 A. An Ascertainable Class 10

 B. A Well-Defined Community of Interests 11

VI. CONCLUSION 15

TABLE OF AUTHORITIES

PAGE(S)

FEDERAL CASES

In re the Gap Securities Litigation
(1978) 79 F.R.D. 283 9

United States v. Truckee-Carson Irrigation District
(D. Nev. 1975) 71 F.R.D. 10 8

STATE CASES

City of Chino v. Superior Court
(1967) 255 Cal.App.2d 747 8

Collins v. Rocha
(1972) 7 Cal.3d 232 12

Employment Development Dept. v. Superior Court
(1981) 30 Cal.3d 256 12

Linder v. Thrifty
(2000) 23 Cal.4th 429 11

Lockheed Martin Corp. v. Superior Court
(2003) 29 Cal.4th 1096 10, 11

Orange County Water Dist. v. City of Riverside
(1959) 173 Cal.App.2d 137 7

Richmond v. Dart Industries, Inc.
(1987) 29 Cal.3d 462 11, 12, 13

Sav-On Drug Stores, Inc. v. Superior Court
(2004) 34 Cal.4th 319 6, 7, 10, 11, 12, 13

Von Schmidt, et al. v. Huntington
(1850) 1 Cal. 55 6

FEDERAL STATUTES

Cal. Const.
Art X, Section 2 13

Federal Rule of Civil Procedure
Section 23 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES, CONTINUED

PAGE(S)

STATUTES

Code of Civil Procedure
Section 382 4, 5

OTHER

California Judicial Council's *Deskbook of Complex Civil Litigation* 6

Scott D. Miller, *Certification of Defendant Classes Under Rules 23(b)(2)*,
84 Colum. L. Rev. 1371 (1984) 6

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

1 STRADLING YOCCA CARLSON & RAUTH
Douglas J. Evertz, Bar No. 123066
2 660 Newport Center Drive, Ste. 1600
Newport Beach, CA 92660
3 (949) 737-4720 (916) 823-6720 fax
Attorneys for City of Lancaster
4

RICHARDS WATSON & GERSHON
5 James L. Markman, Bar No. 43536
Steven Orr, Bar No. 136615
6 355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
7 (213) 626-8484 (213) 626-0078 fax
Attorneys for City of Palmdale
8

LEMIEUX & O'NEILL
9 Wayne Lemieux, Bar No. 43501
2393 Townsgate Road, Ste. 201
10 Westlake Village, CA 91361
(805) 495-4770 (805) 495-2787 fax
11 Attorneys for Littlerock Creek Irrigation District and
Palm Ranch Irrigation District
12

LAGERLOF SENEAL BRADLEY GOSNEY &
13 KRUSE
Thomas Bunn III, Bar No. 89502
14 301 North Lake Avenue, 10th Floor
Pasadena, CA 91101-4108
15 (626) 793-9400 (626) 793-5900 fax
Attorneys for Palmdale Water District and Quartz
16 Hill Water District

17 CALIFORNIA WATER SERVICE COMPANY
John Tootle, Bar No. 181822
18 2632 West 237th Street
Torrance, CA 90505
19 (310) 257-1488; (310) 325-4605-fax
20
21
22
23
24
25
26
27
28

1 NOTICE OF MOTION

2 TO ALL PARTIES AND ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on March 12, 2007, at 1:30 p.m., or as soon thereafter as
4 the matter may be heard, in Department I, Room 534 of the above titled court, located at 110
5 North Hill Street, Los Angeles, California 90012, Cross-Complainants California Water Service
6 Company, City of Lancaster, City of Palmdale, Littlerock Creek Irrigation District, Los Angeles
7 County Water Works District No. 40, Palmdale Water District, Rosamond Community Services
8 District, Palm Ranch Irrigation District and Quartz Hill Water District (collectively, the "Public
9 Water Suppliers") will, and hereby do, move for an order that the action be certified as a class
10 action with a class defined as all owners of land within the adjudication area that is not within the
11 service area of a public entity, public utility, or mutual water company; and that the State of
12 California be determined to be a suitable class representative. This motion will be made on the
13 grounds that the class as defined is an ascertainable class, there are common, similar and unique
14 questions of law or fact, the class action is superior to other available methods for the fair and
15 efficient adjudication of the controversy, and the class representative is able to fairly and
16 adequately to protect the interest of the class.

17 //

18
19 //

20
21 //

22
23 //

24
25 //

26
27 //

28 ORANGE32784.

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

1 This Motion is made pursuant to Code of Civil Procedure Section 382 and applicable
2 common law. This Motion is based upon this Notice of Motion, on the declarations of Mark J.
3 Wildermuth and Jeffrey V. Dunn, the attached Memorandum of Points and Authorities and any
4 other oral and documentary evidence presented at the hearing on the Motion.
5
6

7 Dated: January 10, 2007

BEST BEST & KRIEGER LLP

8
9 By 

10 ERIC V. GARNER
11 JEFFREY V. DUNN
12 STEFANIE D. HEDLUND
13 Attorneys for Cross-Complainants
14 ROSAMOND COMMUNITY SERVICES
15 DISTRICT and LOS ANGELES COUNTY
16 WATERWORKS DISTRICT NO. 40
17
18
19
20
21
22
23
24
25
26
27
28

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

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

1 I. INTRODUCTION

2
3 California Water Service Company, City of Lancaster, City of Palmdale, County of Los
4 Angeles Waterworks District No. 40, Palmdale Water District, Rosamond Community Services
5 District and Quartz Hill Water District (collectively, the "Public Water Suppliers") request that
6 the court certify a class of property owners within the adjudication area of the Antelope Valley
7 Groundwater Basin. As established by the court, the adjudication area boundaries encompass an
8 area of approximately 1,000 square miles which include over 65,000 property parcels. Most
9 parcels are less than 10 acres and are believed to individually pump only a relatively small
10 amount of groundwater, if at all. The individual litigation cost for each parcel would be unduly
11 burdensome given both the parcel size and the minimal nature of its groundwater production.
12 Moreover, the litigation expense and delay for all parties, for the protection of the groundwater
13 resource, and the court is prohibitive without a property owner class for these many parcels.

14 As the court has previously observed, Code of Civil Procedure section 382¹ provides for a
15 class action when there are so many parties that they become "impracticable" for each one to
16 individually appear: "[W]hen the parties are numerous, and it is impracticable to bring them all
17 before the court, one or more may sue or defend for the benefit of all." (Emphasis added.) In this
18 case, there is no reasonable dispute that there are so many parties that it is impracticable to have
19 each one appear before the court. For this reason, the Public Water Suppliers request that the
20 court certify the following class: All owners of land within the adjudication area that is not
21 within the service area of a public entity, public utility, or mutual water company.

22
23 II. CALIFORNIA HAS A PUBLIC POLICY THAT ENCOURAGES USE OF
24 THE CLASS ACTION DEVICE EVEN IF CLASS MEMBERS HAVE
25 INDIVIDUAL CLAIMS

26
27 Over 150 years ago, the California Supreme Court applied Civil Code section 382's

28 ¹ All section references are to the Code of Civil Procedure unless otherwise stated.

LAW OFFICES OF
BEST, BEST & KRUEGER LLP
9 PARK PLAZA, SUITE 1900
IRVINE, CALIFORNIA 92614

1 predecessor and recognized an ongoing need for pragmatism and flexibility in class action use:

2 "[I]t is the duty of the Court to adopt its practice and course of
3 proceeding as far as possible to the existing state of society, and to
4 apply its jurisdiction to all those new cases, which from the
5 progress daily made making in the affairs of man, must continually
6 arise, and not from too strict an adherence to forms and rules
7 established under very different circumstances, decline to
8 administer justice and to enforce rights for which there is no other
9 remedy." (*Von Schmidt, et al. v. Huntington* (1850) 1 Cal. 55, 67.)

7 Since the *Von Schmidt* decision, the California Supreme Court has adapted and modified
8 California class action law to meet the changing needs and issues confronting society and the
9 courts.² To facilitate class actions there are now statewide rules class action rules; and suggested
10 class action procedures in the California Judicial Council's *Deskbook of Complex Civil Litigation*
11 (Mathew Bender). In its most recent decision on California class-action law, the California
12 Supreme Court reaffirmed the importance of the class action device by stating "[t]his state has a
13 public policy which encourages use of the class action device." (*Sav-On Drug Stores, Inc. v.*
14 *Superior Court* (2004) 34 Cal.4th 319, 340.)

15 The public policy favoring class actions is reflected in numerous California Supreme
16 Court decisions holding that individual class member claims cannot bar class certification:

17 "We long ago recognized 'that each class member might be required
18 ultimately to justify an individual claim does not necessarily
19 preclude maintenance of a class action.' Predominance is a
20 comparative concept, and 'the necessity for class members to
21 individually establish eligibility and damages does not mean
22 individual fact questions predominate.' Individual issues do not
23 render class certification inappropriate so long as such issues may
24 effectively be managed."

24 "It may be, of course, that the trial court will determine in
25 subsequent proceedings that some of the matters bearing on the
26 right to recovery require separate proof by each class member. If
27 this should occur, the applicable rule . . . is that the maintenance of
28 the suit as a class action is not precluded so long as the issues which

² Unlike most other states, California did not adopt Federal Rule of Civil Procedure 23. Instead, California's class action law has its origins in early American equity jurisprudence which, in turn, came from England common law. (See Scott D. Miller, *Certification of Defendant Classes Under Rules 23(b) (2)*, 84 Colum. L. Rev. 1371 (1984).

1 may be jointly tried, when compared to those requiring separate
2 adjudication, justify the maintenance of the suit as a class action."³

3
4 "Courts seeking to preserve efficiency and other benefits of class
5 actions routinely fashion methods to manage individual questions.
6 *For decades this court has urged trial courts to be procedurally
7 innovative in managing class actions, and the trial court has an
8 obligation to consider the use of . . . innovative procedural tools
9 proposed by a party to certify a manageable class."*

10 "If the factual underlying class members' claims differ, or if class
11 members disagree as to the proper theory of liability, the trial judge,
12 through use of techniques like sub-classing, or [other judicial]
13 intervention, may incorporate the class differences into the litigative
14 process, and give all class members their due in deciding what is
15 the proper outcome of the litigation."⁴

16 (*Sav-On, supra*, 34 Cal.4th at pp. 334-340 [citations omitted and
17 emphasis added].)

18 That property owners might have individual claims is no bar to their class certification,
19 and as shown below, courts have used the defendant property owner class-action device in water
20 rights cases.

21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

III. BOTH FEDERAL AND CALIFORNIA COURTS HAVE UTILIZED THE
CLASS ACTION DEVICE TO FACILITATE THE RESOLUTION OF
WATER RIGHTS CASES

The use of the class action device is not new to water rights disputes. There are at least three California state court water rights cases with a property owner class.³ In *Orange County Water Dist. v. City of Riverside* (1959) 173 Cal.App.2d 137, 168, the Court of Appeal recognized the use of a property-owner class to adjudicate water rights to the Santa Ana River: "We do not see why the owners of such overlying rights may not properly be treated as a class possessing

³ Cross-Complainants' legal counsel, Best Best & Krieger, represented parties in each of these three cases. Best Best & Krieger LLP was a defendant class counsel in the Putah Creek Adjudication.

1 such common interests as to justify the maintenance of a single action for their protection.”

2
3 In *City of Chino v. Superior Court* (1967) 255 Cal.App.2d 747, the Court of Appeal
4 opined that a property-owner class of overlying and riparian property owners could be used to
5 acquire jurisdiction over a large number of parties although appropriators and prescriptive rights
6 claimants could not be class members: “It is stated that there may be as many as 3,000 claimants
7 to the ownership of water within the boundaries of OCWD. The majority of these may well be
8 owners or overlying or riparian lands whose water rights are based solely on ownership of such
9 lands. Nothing that we have said precludes their being represented as a class or classes.” (255
10 Cal.App.2d at p. 763.)

11
12 In the *Putah Creek Adjudication*, Sacramento County Superior Court Case No. 2565, the
13 Superior Court granted plaintiffs’ motion for certification of a defendant class of riparian property
14 owners. A copy of the court’s order granting plaintiffs’ certification order is attached as Exhibit
15 A to the Declaration of Jeffrey V. Dunn.

16
17 Additionally, there is a reported federal case adjudicating California water rights with a
18 defendant class. In *United States v. Truckee-Carson Irrigation District* (D. Nev. 1975) 71 F.R.D.
19 10, 16, the District Court addressed the issue of a defendant class action in a water rights dispute
20 between the United States, the Pyramid Lake Paiute Tribe and defendant water rights holders.
21 The District Court noted that the defendant class members derived their water rights from a
22 common source of supply and that the diversions sought by the plaintiff United States would
23 diminish the water rights of all members of the defendant class: “For that reason, the Court found
24 that the “interests of each member of the class are identical in both law and fact.”

25
26 Thus, the issue is not whether a defendant class can be used to adjudicate water rights, but
27 whether the defendant class is appropriate here. As explained, the proposed class members have
28 predominate common questions of law and fact. They each allege an overlying right, derive their

1 water from a common groundwater supply, and because of diversions by appropriators faced
2 diminishment of the native water supply. Thus, the proposed landowner class meets the
3 requirements of California class-certification requirements explained below.

4
5 IV. DEFENDANT CLASS ACTIONS ARE DIFFERENT FROM PLAINTIFF
6 CLASS ACTIONS IN THAT THE DEFENDANT CLASS REPRESENTATIVE
7 IS SELECTED BY THE COURT OFTEN OVER THE OBJECTION OF THE
8 DEFENDANT CLASS REPRESENTATIVE

9
10 Although the requirements for defendant class certification are the same as those for the
11 more common plaintiffs' classes, defendant class actions are unique in that the defendant class
12 representative and its legal counsel are selected by the court usually over the objection of the
13 defendant class representative:

14 "Commentators have frequently criticized the potential for
15 inadequate representation of defendant classes. Because the named
16 defendant generally does not seek his representative status and
17 often vehemently opposes it, a court may fear that an unwilling
18 representative will necessarily be a poor one. [Citation omitted].
19 Related to this concern is the fear that the plaintiff will exercise his
20 power of selection to appoint a weak, ineffective opponent as class
21 representative. 'It is a strange situation where one side picks out the
22 generals for the enemy's army.'" [Citation omitted.]

23 "Upon closer examination, however, these concerns appear less
24 justified than some others. Ironically, the best defendant class
25 representative may well be the one who most vigorously and
26 persuasively opposes certification since he is the one most likely to
27 guarantee an adversary presentation of the issues. [Citation
28 omitted.] In fact, a court should be suspicious of a willing
defendant class representative because of the likelihood of collusion
with the plaintiff." Thus, the focus upon the defendant's desire to
represent his class is misplaced. The real concern with an unwilling
class representative should be his ability to carry the inevitable
added expense of class defense and the fairness of placing that
burden upon him."

(*In re the Gap Securities Litigation* (1978) 79 F.R.D. 283, 290 [citations omitted].)

One example of the Superior Court selecting existing defendant parties to serve as the

1 defendant class representatives and their legal counsel was the *Putah Creek Adjudication*,
2 Sacramento County Superior Court Case No. 2565. In that case, the Superior Court granted
3 plaintiffs' motion for certification of a defendant class of overlying property owners. Despite the
4 objections by certain defendants, the Superior Court nonetheless selected those defendants and
5 their legal counsel to serve as defendant class representative and legal counsel, respectively.
6 (See Ex. A to the Declaration of Jeffrey V. Dunn.)

7
8 V. THE PROPOSED CLASS MEETS CALIFORNIA'S CLASS
9 CERTIFICATION REQUIREMENTS

10
11 In *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, the California
12 Supreme Court stated the two class certification requirements: (1) an ascertainable class; and (2)
13 a well-defined community of interest among class members. (*Sav-On, supra*, at p. 326, citing
14 *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104.) As shown below, the
15 proposed class members (1) are all located within a court-defined area; (2) allege the same
16 correlative, overlying right to the reasonable and beneficial use of a common supply of
17 groundwater, and (3) need a physical solution to overdraft conditions which solution includes
18 groundwater management and supplemental water supplies. Thus, class certification of
19 landowner parties is both proper and necessary.

20
21 A. An Ascertainable Class

22
23 To determine whether the proposed class is ascertainable, the court examines the proposed
24 class definition, size of the class, and the means for identifying class members. (*Sav-On, supra*,
25 at p. 327, citing *Lockheed, supra*, 29 Cal.4th at pp. 1104-1107.) In this case, the proposed class is
26 defined as: All owners of land (1) within the adjudication area, and (2) that do not receive water
27 from a public entity, public utility or mutual water company.

28 The class is ascertainable because class members can be identified through public land

1 records. (See *Richmond v. Dart Industries, Inc.* (1987) 29 Cal.3d 462, 478 [California Supreme
2 Court found an ascertainable class of property owners because there were public records showing
3 land ownership; and that joinder of all of the potential plaintiff property owners was
4 impracticable because there were over 2,600 lots.]) In the present case, there are approximately
5 65,000 parcels and they can be identified from public records. Moreover, there is no reasonable
6 dispute that it would be impracticable to individually name and serve each parcel owner.

7 8 **B. A Well-Defined Community of Interests**

9
10 In *Sav-On*, the California Supreme Court explained "the community of interest"
11 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
12 representatives with claims or defenses typical of the class; and (3) class representatives who can
13 adequately represent the class. (*Sav-On, supra*, at p. 326, citing *Lockheed, supra*, 29 Cal.4th at p.
14 1104.) The proposed class satisfies each of these requirements.

15 16 **I. The Proposed Class Has Predominant Questions of Law and Fact**

17
18 A well defined community of interests exists when there are predominant questions of law
19 or fact, and that class representation with claims or defenses are typical of the class and that class
20 representatives will adequately represent the class. (*Linder v. Thrifty* (2000) 23 Cal.4th 429, 435.)

21 "Because trial courts are ideally situated to evaluate the efficiencies and practicalities of
22 permitting group action, they are afforded great discretion in granting or denying certification. . .
23 ." (*Sav-On, supra*, at p.326, citing *Linder v. Thrifty Oil* (2000) 23 Cal.4th 429, 435-436.) "In
24 determining whether there is substantial evidence to support a trial court's certification order,
25 [reviewing courts] consider whether the theory of recovery advanced by the proponents of
26 certification is, as an analytical matter, likely to prove amenable to class treatment." (*Sav-On,*
27 *supra*, at p. 327 citing *Lockheed, supra*, at p. 1108.) "Reviewing courts consistently look to the
28 allegations of the complaint and the declarations of attorneys representing the . . . class to resolve

1 the question." (*Sav-On, supra*, at p. 327 quoting *Richmond v. Dart Industries* (1981) 29 Cal.3d
2 462, 478.)

3 The Public Water Suppliers represent over 100,000 residents and businesses all of whom
4 depend upon the Public Water Suppliers' rights to Antelope Valley Groundwater Basin for their
5 secure supply of water in an arid area. In addition to these homes and businesses, there are
6 numerous land parcels in the area encompassed by the court's established adjudication
7 boundaries. (See Declaration of Mark Wildermuth, ¶¶ 1- 8.)

8 Mr. Mark Wildermuth is one of California's most respected groundwater engineers. He
9 was asked by certain parties' experts' "Technical Committee" to determine the extent of
10 groundwater pumping within the adjudication area. Through the use of digital mapping of land
11 parcels in both Los Angeles and Kern Counties, he was able to identify those parcels within the
12 adjudication area but outside the water service areas of the Public Water Suppliers. As a result of
13 his work and analysis, Mr. Wildermuth estimates that there are approximately 65,000 land parcels
14 within the adjudication area that do not receive water service from a public entity, public utility,
15 or mutual water company. (Wildermuth Decl., ¶¶ 7-8.)

16 All class members own land parcels within the adjudication area. They each have the
17 right to allege an identical overlying right to take native groundwater for their reasonable and
18 beneficial use. As they each may seek a common right, they have predominantly common issues
19 of fact and law. Additionally, each class member will have common defenses against competing
20 water rights including a claim by the United States that it has a federal reserved right.

21 As explained above, the possibility that class members might have different pumping
22 histories is no reason not to certify the class: "In any event, a class action is not inappropriate
23 simply because each member of the class may at some point be required to make an individual
24 showing as to his or eligibility for recovery or as to the amount of damages." (*Sav-On, supra*, at
25 p. 332 quoting *Employment Development Dept. v. Superior Court* (1981) 30 Cal.3d 256, 266.)
26 "We long ago recognized 'that each class member might be required ultimately to justify an
27 individual claim does not necessarily preclude maintenance of a class action.'" (*Sav-On, supra*, at
28 p. 332-333 quoting *Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

1 Should the interest of the class become contradictory at a later point, the court has the
2 power to decertify the class. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 477.)
3 Moreover, each class member has the right to opt-out of the class, or the court may decide at a
4 later date based upon information unknown at this time whether there would be a severe
5 irreconcilable conflict and the class should be decertified. (*Sav-On, supra*, at p. 335.)
6

7 **2. The State of California Is a Land Owner That Has Claims and Defenses Common**
8 **to the Class.**
9

10 A class needs only one class representative with some claims and defenses that are typical
11 of the class. (*Richmond, supra*, 29 Cal.3d at p. 470.) As shown below, the claims and defenses
12 of landowner parties are similar and one of existing landowner parties is the State of California
13 who can adequately and vigorously represent the class.

14 Like the State, each class member is a landowner within the adjudication area. The allege
15 an overlying right to pump groundwater for the reasonable and beneficial use on their property.
16 (Cal. Const. art X, sec. 2.) As overlying landowners, the State and the class members each have
17 an identical correlative right to the native groundwater supply. Additionally, class members and
18 the State have the same interest in determining the safe yield of the adjudication area, as well as a
19 physical solution to the overdraft conditions.

20 The State and class members will have similar defenses. For example, class members
21 have a common interest in defending against competing claims that would reduce their correlative
22 right to the native yield including a common defense to Federal Reserve and prescriptive rights
23 claims.

24 It is important to note that the State has already demonstrated an active role and interest
25 the adjudication as the State actively participated in the court hearing on the adjudication area
26 determination. Finally, proposed class members and the State have a common interest in the
27 court determination and enforcement of a groundwater management plan as a physical solution to
28 overdraft conditions.

LAW OFFICES OF
BEST, BEST & KRUEGER LLP
2 PARK PLAZA, SUITE 1500
IRVINE, CALIFORNIA 92614

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. No Landowner Party Has the Depth of Experience or Expertise As Does the State of California's Attorneys in Both Water Rights and Class Action Litigation.

The State of California has the necessary legal resources and litigation experience to adequately represent the landowner class. The State has attorneys experienced in both water rights disputes and class action litigation. The Attorney General for the State of California is authorized by statute to represent the public at large in various class action cases.

Additionally, the State of California has a vast number of experienced groundwater engineers and other technical experts to represent the public as a class representative and class counsel. For example, in the recent adjudication area hearing, the State provided extensive testimony by Bob Pierotti, Supervising Engineering Geologist for the California Department of Water Resources, Southern District.

Finally, the State has extensive experience in litigating land use and environmental issues including water rights, and has significant experience in many types of class action litigation. No other landowner party's legal counsel has the experience and expertise as does the State in both water rights and class action cases.

//

//

//

//

//

//


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI. CONCLUSION

For the reasons above, the Public Water Suppliers respectfully request that the Court grant their motion to certify a class in this proceeding.

Dated: January 10, 2007

BEST BEST & KRIEGER LLP

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

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

ORANGE\32817.I

1 **PROOF OF SERVICE**

2 I, Kerry V. Keefe, declare:

3 I am a resident of the State of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Best Best & Krieger LLP, 5 Park Plaza,
Suite 1500, Irvine, California 92614. On January 10, 2007, I served the within document(s):

5 **PUBLIC WATER SUPPLIERS' NOTICE OF MOTION AND MOTION FOR CLASS**
6 **CERTIFICATION; DECLARATIONS OF MARK WILDERMUTH AND JEFFREY**
7 **V. DUNN**

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

17
18 I am readily familiar with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
20 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.

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

23 Executed on January 10, 2007, at Irvine, California.

24 
25 _____
Kerry V. Keefe

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