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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 1550 (b)) ANTELOPE VALLEY GROUNDWATER CASES Included actions: Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company Los Angeles Superior Court Case No. BC 325201 Los Angeles County Waterworks District No. 40 vs. Diamond Farming Company Kern County Superior Court Case No. S-1500-CV 254348 NFT Diamond Farming Company vs. City of Lancaster Riverside County Superior Court Lead Case No. RIC 344436 [Consolidated w/Case Nos. 344668 & 353840]	Judicial Council Coordination No. 4408 Case No.: 1-05-CV-049053 DIAMOND FARMING COMPANY'S OBJECTIONS TO PUBLIC WATER SUPPLIERS' PROPOSALS FOR CLASS DEFINITIONS AND METHOD OF NOTICE Hearing: Date: April 16, 2007 Time: 9:00 a.m. Dept.: 1

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Diamond Farming Company ("Diamond") presents the following objections to the Public Water Suppliers' proposals for class definitions and method of notice.

I. INTRODUCTION

On March 12, 2007, this court tentatively approved a defendant class in concept, noting that the Public Water Suppliers' claims for prescription may not be amenable to trial on a class-wide basis. The court ordered that the Public Water Suppliers propose language to define classes or subclasses, to provide the name of an appropriate class representative, and to propose the language and method of notice.

Defendant Diamond continues to object that this litigation does not lend itself to class treatment because of the Public Water Suppliers' claims of prescriptive rights, which must be litigated uniquely against each property owner and each property. However, the Public Water Suppliers have now responded with a completely inadequate proposal. The Public Water Suppliers have failed to propose a defendant class representative. The Public Water Suppliers have not proposed any form or language for notice. The Public Water Suppliers have proposed notice by publication, which is completely inadequate to meet due process requirements. The Public Water Suppliers have not addressed how their defined subclasses and notice to those classes in a case affecting title to real property can be accomplished to bind purchasers of affected properties during the pendency of the litigation, without which there can be no basin-wide adjudication to meet the comprehensive adjudication requirements of the McCarran Amendment.

The Public Water Suppliers' effort to certify a defendant class seems haphazard and ill considered. It lacks any thoughtfulness. It leads this court into a quagmire. For all of these reasons, the court should finally deny class certification in this case, or compel the Public Water Suppliers to respond further and to meet these obstacles and objections.

II. ARGUMENT

A. *The Public Water Suppliers have not proposed a defendant class representative– and have proposed that none can exist.*

The party seeking class certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*Lockheed Martin*

Corp. v. Superior Court (2003) 29 Cal.4th 1096, 1103-1104 (*Lockheed Martin*), citing *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913; *Sony Electronics, Inc. v. Superior Court*(2006) 145 Cal.App.4th 1086, 1093- 1094.) The community of interest requirement for class certification embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1101.) The primary criterion for determining whether a class representative has adequately represented a class is whether the representative, through qualified counsel, will vigorously and tenaciously protect the interests of the class.

In *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, the court emphasized that the court must give careful scrutiny in certifying a defendant class, as opposed to a plaintiff class. The court noted that a defendant class should be certified and such an action tried only after the most careful scrutiny is given to preserving the safeguards of adequate representation, notice and standing, and that failure to insure any of these essentials requires reversal of a judgment against a defendant class.

The Public Water Suppliers previously proposed the State of California as the defendant class representative. The State is a completely inappropriate representative as pointed out in Diamond's original opposition to the motion for class certification. Now, the Public Water Suppliers propose to define two subclasses– essentially (A) those landowners who do not have active groundwater wells, and (B) those that do. From these subclasses, the Public Water Suppliers propose to exclude all public entities, and any party which has been or will be named and served in this lawsuit. Incredibly, the Public Water Suppliers, by definition, have now proposed a subclass *that can never be represented.* Any named defendant in either subclass must be served, thereby excluding that defendant from the class. Thus, the Public Water Suppliers propose hypothetical subclasses that have no representation in the litigation and can never have representation in the litigation– a phantom which defeats class certification.

This problem demonstrates how little thought and care the Public Water Suppliers have taken in attempting to lead this court into extremely complicated class action litigation. As proposed by the Public Water Suppliers, the court has no choice but to abandon the idea. The court cannot certify a class

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without designated class representatives that can speak to the motion to certify. The court cannot certify a class with unknown and potentially non-existent representatives.

B. *The Public Water Suppliers have not proposed the language of any proposed notice to the subclasses.*

The court has ordered that the Public Water Suppliers provide the "form of notice" to the class members. The Public Water Suppliers have not provided that "form"' but have instead simply proposed the method of notice (by publication– an inadequate proposal as set forth below).

The Public Water Suppliers propose that members of the subclasses may "opt out" of the class by waiver of groundwater rights or by connection to a public system. Whenever members of a class are given exclusion rights, the contents of notice must provide an explanation of the case, explain the right of exclusion, explain how the member will be bound by a judgment, and explain the right to counsel. (Cal. Rules of Court, Rule 3.76 (d)). The Public Water Suppliers have made no proposal that satisfies these requirements. As the proponents of the class proceeding, Public Water Suppliers have this burden. Because notice is a critical component of certification itself, it is unfair for the Public Water Suppliers to ask for a final certfication order without proposing the language of notice, and it is not in compliance with the court's order.

C. *The Public Water Suppliers have proposed notice by publication, which does not meet due process standards.*

There is a substantial difference between a plaintiffs' class suit and a lawsuit against a class of defendants. Defendants' class actions involve the serious danger of lack of due process. A defendant class should be certified and such an action tried only after the most careful scrutiny is given to preserving the safeguards of due process. Failure to insure the essentials of due process ultimately would require reversal of any judgment against a defendant class. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 844- 845; See also, *Pinnacle Holdings, Inc. v. Simon* (1995) 31 Cal.App.4th 1430, 1437.)

In order to meet due process standards in this case, notice to the class must be consistent with the standard established in *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. The required notice must be intended and reasonably calculated, under all the circumstances, to apprise

interested parties of the claim and to afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their own claim. The means employed must be such as one desirous of actually informing might reasonably adopt to accomplish it.

In *Walker v. City of Hutchison* (1956) 352 U.S. 112, the court held that statutory constructive notice by publication failed to meet the requirements of due process. There a city exercised its power of eminent domain over a landowner's property and the Supreme Court held that such notice failed to meet the *Mullane* standard, and ordered that notice "reasonably intended to and calculated to inform" must be given to any landowner whose address is readily known from the public record.

In *Schroeder v. City of New York* (1962) 371 U.S. 208, the court applied the *Mullane* rule, holding that a riparian property owner was not given adequate due process notice of the City's eminent domain proceedings to divert upstream waters, when notice was attempted only by postings and publication. It was held that some good faith effort to give actual notice to property owners was required, if their names were reasonably ascertainable from public records. (See *Jones v. Flowers* (2006) 126 S. Ct. 1708; 164 L. Ed. 2d 415; 2006 U.S. LEXIS 3451.)

In this case, each individual class member must be notified by first-class mail in order to satisfy due process. (See *Eisen v. Carlisle and Jacquelin, et al.* (1974) 417 U.S. 156.)[1] Here, the Public Water Suppliers themselves have admitted in their original motion that "the class members are identifiable through public land records." (See Motion at p. 10- 11.) Since these landowners are identifiable by name and address through the public assessors' offices, they must be given notice by mail. Publication in local newspapers simply does not afford the requirements of due process.

D. *The proposed class definitions and method of notice does not address how the court may maintain jurisdiction to comprehensively adjudicate land rights affecting title as against bona fide purchasres during the pendency of the litigation.*

The Public Water Suppliers propose to define, identify, and notify a set of landowners who hold title to affected property at a point in time. As the litigation ensues, this group will undoubtedly change by all the means of disposition by which title to real property may change hands. How do the Public

1 Diamond joins in the response of White Fence Farms Mutual Water Co., Inc.

Water Suppliers propose to deal with those who acquire title after notice, who have no notice, and who are bona fide purchasers? The proposal is silent.

As Diamond has stated previously in other contexts, the Public Water Suppliers are attempting to affect and quiet *title* to the overlying properties. An action to quiet title must include all of the following: (1) a *legal description of the property* that is the subject of the action; (2) the title of the plaintiff, and the basis of the title, and, if title is based upon adverse possession, *the specific facts constituting the adverse possession*; (3) the adverse claims to plaintiff's alleged title; (4) the date as of which the determination is sought, and, if the date is different than the date of the complaint, a specific explanation of the reasons for a different date; (5) a prayer for determination of title.[2] Furthermore, a quiet title action requires that the plaintiff file a *lis pendens* in each county where the described real property is located, and that plaintiff name all defendants "that are of record or known to the plaintiff or *reasonably apparent* from an inspection of the property."

If the court is to entertain any effective class litigation, it must ensure that all affected parties are notified and that the court can retain jurisdiction as against subsequent owners. The quiet title requirement of a *lis pendens* or its equivalent is necessary to ensure that the court retains appropriate jurisdiction. The main purpose of a lis pendens is to preserve the court's jurisdiction over property: if a party to litigation were able to transfer clear title during the litigation, the court would be unable to render an effective judgment. The lis pendens prevents "the defendant property owner from frustrating any judgment that might eventually be entered by transferring his or her interest in the property while the action was still pending."[3]

As proposed, the Public Water Suppliers have not addressed this glaring deficiency. Without an effective continuing jurisdiction of the court over *title*, the class is ephemeral, and a comprehensive adjudication required under the McCarran Amendment, to bind the United States on a waiver of sovereign immunity, is impossible.

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2 (Code Civ. Proc., § 760.020.)

3 (*Lewis v. Superior Court* (1994) 30 Cal. App. 4th 1850, 1860.)

III. CONCLUSION

The Public Water Suppliers continue to haphazardly and thoughtlessly pursue class certification, in a case where class litigation is extremely problematic, if not improper, especially given the Public Water Suppliers' claims of prescription. The Public Water Suppliers current proposals further demonstrate that they have given little thought to the complexities of what they propose, and have left the court with no meaningful guidance to put a defendant class into effect. At this point, in light of these deficiencies, Diamond requests that the court now denty class certification, or, in the alternative, require the Public Water Suppliers, as proponents, to adequately address the problems stated in these objections and the other responses.

Dated: April 6, 2007

LeBEAU • THELEN, LLP

By: _____
DAVID R. LAMPE, Esq.,
Attorneys for DIAMOND FARMING COMPANY,
a California corporation

PROOF OF SERVICE

ANTELOPE VALLEY GROUNDWATER CASES
JUDICIAL COUNCIL PROCEEDING NO. 4408
CASE NO.: 1-05-CV-049053

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter Drive, Suite 300, Bakersfield, California 93309. On April 6, 2007, I served the within DIAMOND FARMING COMPANY'S OBJECTIONS TO PUBLIC WATER SUPPLIERS' PROPOSALS FOR CLASS DEFINITIONS AND METHOD OF NOTICE

■ (**BY POSTING**) I am "readily familiar" with the Court's Clarification Order. Electronic service and electronic posting completed through www.scefiling.org ; All papers filed in Los Angeles County Superior Court and copy sent to trial judge and Chair of Judicial Council.

Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Attn: **Department 1**

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
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☐ (**BY MAIL**) 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 at Bakersfield, California, in the ordinary course of business.

☐ (**BY PERSONAL SERVICE**) I caused such envelope to be delivered by hand to the offices of the addressee(s). Executed on _____, 2007, at Bakersfield, California.

■ (**STATE**) I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that the foregoing was executed on April 6, 2007, in Bakersfield, California.

DONNA M. LUIS