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Defendants in Case No. MC021281 only.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

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

16 ANTELOPE VALLEY GROUNDWATER
CASES

17 Included actions:

18 Los Angeles County Waterworks District No.
19 40 vs. Diamond Farming Company
Los Angeles Superior Court
20 Case No. BC 325201

21 Los Angeles County Waterworks District No.
22 40 vs. Diamond Farming Company
Kern County Superior Court
Case No. S-1500-CV 254348 NFT

23 Diamond Farming Company vs. City of
24 Lancaster
Riverside County Superior Court
25 Lead Case No. RIC 344436 [Consolidated
w/Case Nos. 344668 & 353840]

26 _____
27 **AND RELATED CROSS-ACTIONS.**

Judicial Council Coordination No. 4408

Los Angeles County Superior Court, Lead
Case No. BC 325201

(For E-Posting/E-Service Purposes Only,
Santa Clara County Case No. 1-05-CV-
049053)

Assigned to the Honorable Jack Komar

**REPLY TO PLAINTIFFS' OBJECTION
TO NOTICE OF RELATED CASE
FILED BY TEJON RANCHCORP**

**[SERVED CONCURRENTLY WITH A
REQUEST FOR JUDICIAL NOTICE
AND DECLARATION OF BOB H.
JOYCE IN SUPPORT THEREOF]**

Hearing Date: November 18, 2010
Time: 9:00 a.m.
Dept: 1

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that TEJON RANCHCORP, et al., hereby submits this reply to the
3 Plaintiffs' Objection to Notice of Related Case.

4 I.

5 INTRODUCTION

6 In the objection filed by Plaintiffs, Plaintiffs cite to California Rule of Court, Rule 3.300(a),
7 acknowledging the guiding principals for the determination required. Plaintiffs do not contest, and by
8 silence concede that they have been affirmatively named or identified as Roe or Doe cross-defendants
9 in various cross-complaints filed by the purveyor cross-complainants in this Adjudication. This author
10 has been informed by Attorney Jeff Dunn that he believes that service of process has been completed
11 on both plaintiffs.¹ Based upon a review of the court docket, to date, no default appears to have been
12 taken.

13 It is indisputable that if the McCarran Act jurisdiction required, is to be maintained, that both
14 plaintiffs are indispensable parties. Plaintiffs, nonetheless, argue that: "THE CASES INVOLVE
15 DIFFERENT AND UNRELATED CLAIMS;" "THE CASES INVOLVE DIFFERENT QUESTIONS
16 OF FACT AND LAW;" and "THE FACT THAT BOTH CASES INVOLVE GROUNDWATER IS
17 NOT DETERMINATIVE." However, plaintiffs do not clearly articulate nor provide this court with a
18 clear statement of the nature of the dispute framed in the plaintiffs' action. In support of the objection,
19 plaintiffs' state: "**Plaintiffs do not seek a quantification of the water rights that might be associated
20 with the real property at issue, . . .**" (See Objection, page 2, line 27, through page 3, line 1.), and
21 "**Plaintiffs do not seek quantification of the amount of these groundwater rights, . . .**" These
22 statements are not true.

23 Fundamentally, plaintiffs fail to acknowledge that the purpose of California Rule of Court, Rule
24 3.300, is intended, to not only avoid substantial duplication of judicial resources, but is also intended
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26 _____
27 ¹ See Declaration of Bob H. Joyce filed in support of the request for judicial notice and filed
28 concurrently herewith.

1 to prevent and avoid the possibility of inconsistent and/or incompatible judgments being rendered by
2 two separate courts involving common issues and/or property rights.

3 **II.**

4 **THE NATURE OF THE CLAIMS IN PLAINTIFFS' ACTION.**

5 Plaintiffs' action arises out of a 2006 settlement agreement which provided for an exchange of
6 land between Tejon Ranchcorp and the plaintiffs. As one leg of the exchange, Tejon Ranchcorp would
7 convey the "Tejon Parcel" (i.e., the 160 acre parcel) to "Burrows." (2006 Agreement, p. 1,
8 "Agreement," and Ex. B to the agreement.) The 2006 Agreement (at p. 4, 19th-22d lines) provides that
9 "following the Closing Date, Burrows . . . shall obtain at Closing the water, mineral, gas, oil and all other
10 rights *inherent in fee simple ownership* on the Tejon Parcel." (Italics added.) The agreement expressly
11 "survive[s] the delivery and recordation of the deeds called for herein . . ." (2006 Agreement, p. 8,
12 "Binding Contract.")²

13 The exchange was completed by the recordation of grant deeds on February 6, 2007. (Complaint,
14 Exs. B & C.) Ranchcorp conveyed the Tejon Parcel to the Plaintiff, 300 A 40 H, LLC.

15 In the plaintiffs' action, Tejon Ranchcorp does not claim that it did not convey by grant deed fee
16 simple title. Tejon Ranchcorp does not contend that the grant deed did not convey all water, mineral,
17 gas, oil and all other rights inherent in fee simple ownership of the conveyed parcel (i.e., the 160 Acre
18 Parcel). Tejon does contend that it did not convey a fixed or quantified pumping right. It is axiomatic
19 that the conveyance by Grant Deed of fee simple title conveyed the overlying water right. That right is
20 not a fixed right to pump but a correlative right shared with all other active and dormant overlying
21 landowners. As a matter of law the right is limited by Article X, Section 2 of the California State
22 Constitution. Finally, its priority is subject to the claims of prescription asserted by all purveyors in this
23 Adjudication.

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26 ² The 2006 Agreement contains a more elaborate provision relating to plaintiffs' retention of
27 water rights, referred to as the "Burrows Water Rights," on the land conveyed by 300A to Ranchcorp
28 in the other leg of the exchange. (2006 Agreement, p. 4, 22d-37th lines.) Ranchcorp made several
ancillary promises pertaining to the Burrows Water Rights which do not apply to water rights on the 160
Acre Parcel. (*Id.*, p. 4, 25th-37th lines.)

1 On the other hand, and contrary to plaintiffs' assertion in the objection, i.e., that they do not seek
2 to quantify the amount of that overlying groundwater right, plaintiffs' claimed at the commencement of
3 their action that:

- 4 1. **“Based on the principal of overlying rights, Burrows has a right to use either 512**
5 **AFY or, alternatively, at least 19.6% of the groundwater pumped from the**
6 **reservoirs beneath his real property.”** (See “Ex Parte Application of Plaintiffs Bruce
7 Burrows and 300 A 40 H, LLC, for Temporary Restraining Order and Order to Show
8 Cause Re Preliminary Injunction; Memorandum of Points and Authorities in Support
9 Thereof,” page 13, lines 12-14.)³

10 and

- 11 2. **“Accordingly, defendants own reports establish that Burrows took title to overlying**
12 **water rights in the amount of 512 AFY along with the 160 acre parcel.”**³ (See “Ex
13 Parte Application of Plaintiffs Bruce Burrows and 300 A 40 H, LLC, for Temporary
14 Restraining Order and Order to Show Cause Re Preliminary Injunction; Memorandum
15 of Points and Authorities in Support Thereof,” page 16, lines 25-26.)³

16 In addition to the original claim, i.e., that Tejon conveyed a fixed and quantified overlying right,
17 the plaintiffs inserted new matter in their First Amended Complaint, as re-pled in the pending and
18 operative Second Amended Complaint. Specifically, new additional claims that plaintiffs' right to use
19 storage space within the basin for their reasonable and beneficial use of water on overlying properties
20 is paramount to the defendants' right to use storage space within the basin for storage of banked imported
21 water and return flows from imported water. (See Notice of Related Case given by Tejon Ranchcorp
22 and Second Amended Complaint attached thereto, specifically paragraph 41 therein).

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27 ³ See Exhibit “A” to concurrently filed Request for Judicial Notice in Support of Reply to
28 Objection and Declaration of Bob H. Joyce.

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III.

THE FOUR GUIDING CRITERIA SET FORTH IN CALIFORNIA RULE OF COURT, RULE 3.300(a), THE McCARRAN ACT, AND THE NECESSITY OF AVOIDING THE POTENTIAL FOR IRRECONCILABLE AND/OR INCONSISTENT JUDGMENTS MANDATES THAT PLAINTIFFS' CASE BE DETERMINED TO BE A RELATED CASE.

Plaintiffs are concededly overlying landowners within the boundaries of the Area of Adjudication as established by this court in the Phase I trial. Jurisdiction over the Federal Government is dependent upon compliance with the McCarran Act. Consequently, the Adjudication is *inter se* and plaintiffs are indispensable parties. Plaintiffs have been identified affirmatively as cross-defendants and as Roe and/or Doe cross-defendants, and it is believed that plaintiffs have been served with process, have not yet appeared, and no default has yet been taken. Plaintiffs' action has put into issue Tejon's right to bank imported water, to recapture that imported water, and to later recapture the return flows from imported water, once used. Plaintiffs' action also asserts that it acquired fee simple title to the 160 acre parcel, and all overlying water rights associated therewith. However, plaintiffs go further, and make the affirmative claim that the effect of the Grant Deed was to convey to plaintiffs the fixed and quantified right to pump the amount of 512 AFY. Thus, plaintiffs claim attempts to ignore the correlative nature of the overlying right, the inherent limitations on that right under Article X, Section 2 of the California State Constitution, and significantly ignores the pending prescriptive claims asserted by all purveyors as against all landowners, not only Tejon, but plaintiffs as well. Thus, if the possibility of inconsistent judgments is to be avoided, and jurisdiction over the Federal Government preserved, and, if the water rights and groundwater storage and banking rights as between plaintiffs and Tejon, are to be adequately adjudicated, the same cannot occur in a vacuum and without consideration of all correlative overlying rights, active and dormant, as well as the universally asserted prescriptive claims made by all purveyors as against all landowners.

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IV.
CONCLUSION

For the foregoing reasons, it is respectfully submitted that plaintiffs' case must be deemed a related case consistent with the guidance, principals, and objectives articulated in California Rule of Court, Rule 3.300.

Dated: November 2, 2010

LeBEAU • THELEN, LLP

By: _____



BOB H. JOYCE
Attorneys for Defendants TEJON RANCHCORP,
a California corporation; TEJON RANCH
COMPANY, a Delaware Corporation;
CENTENNIAL FOUNDERS, LLC, a Delaware
Limited Liability Company

PROOF OF SERVICE

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

4 I am a citizen of the United States and a resident of the county aforesaid; I am over the age
5 of eighteen years and not a party to the within action; my business address is: 5001 E. Commercenter
6 Drive, Suite 300, Bakersfield, California 93309. On November 2, 2010, I served the within **REPLY**
7 **TO PLAINTIFFS' OBJECTION TO NOTICE OF RELATED CASE FILED BY TEJON**
8 **RANCHCORP [SERVED CONCURRENTLY WITH A REQUEST FOR JUDICIAL NOTICE**
9 **AND DECLARATION OF BOB H. JOYCE IN SUPPORT THEREOF]**

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

13 Los Angeles County Superior Court
14 111 North Hill Street
15 Los Angeles, CA 90012
16 Attn: **Department 1**
(213) 893-1014

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordinator)
Carlotta Tillman
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Fax (415) 865-4315

17 (BY MAIL) I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under that practice it would be deposited with the U.S.
19 Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in
20 the ordinary course of business.

21 (STATE) I declare under penalty of perjury under the laws of the State of
22 California that the above is true and correct, and that the foregoing was executed on November 2,
23 2010, in Bakersfield, California.

24 
25 LEQUETTA HANSEN
26
27
28