

1 **COLDREN LAW OFFICES**
2 **A Professional Law Corporation**
3 Robert S. Coldren (Bar No. 81710)
4 3 Hutton Centre Drive, Ninth Floor
5 Santa Ana, California 92707
6 (714) 955-6106
7 Email: RColdren@coldrenlawoffices.com

8 Attorneys for Cross-Defendant,
9 MILANA VII, LLC, dba Rosamond Mobile Home Park

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 ANTELOPE VALLEY GROUNDWATER
14 CASES
15 Included Actions:
16 Los Angeles County Waterworks District No.
17 40 v. Diamond Farming Co.
18 Los Angeles County Superior Court
19 Case No. BC 325201
20 Los Angeles County Waterworks District No.
21 40 v. Diamond Farming Co.
22 Kern County Superior Court
23 Case No. S-1500-CV-254-348
24 Wm. Bolthouse Farms, Inc. v. City of
25 Lancaster, Diamond Farming Co. v. City of
26 Lancaster, Diamond Farming Co. v. Palmdale
27 Water Dist.
28 Riverside County Superior Court
Consolidated actions
Case Nos. RJC 353 840, RIC 344 436, RIC 344
668

Judicial Council Coordination No. 4408

For filing purposes only:
Santa Clara County Case No. 1-05-CV-
049053

Assigned to The Honorable Jack Komar

**CROSS-DEFENDANT MILANA VII, LLC,
dba ROSAMOND MOBILE HOME PARK'S
STATEMENT OF OBJECTIONS TO THE
PROPOSED STIPULATED JUDGMENT
AND PHYSICAL SOLUTION AND
ASSERTION OF CLAIMS AND RIGHTS TO
PRODUCE GROUNDWATER FROM THE
ANTELOPE VALLEY BASIN;

AND REQUEST TO SEPARATELY
ADJUDICATE CROSS-DEFENDANT'S
CLAIMS**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the prior Orders of the Court, the Court's First Amended Case Management

1 Order dated January 22, 2015, and the Court's orders issued at a subsequent hearing on March 26,
2 2015, Cross-Defendant Milana VII, LLC, dba Rosamond Mobile Home Park, as a non-stipulating
3 party herein, hereby submits the following objections to the proposed Stipulated Judgment and
4 Physical Solution, and asserts the following claims and rights to produce groundwater from the
5 Antelope Valley Basin:

- 6 1. The proposed Stipulated Judgment and Physical Solution ("SPPS") allocates the
7 entire Native Safe Yield ("NSY") free of replacement assessment to overlying
8 landowners except Cross-Defendant and potentially imposes onerous and expensive
9 terms on Cross-Defendant before it is determined by the Watermaster whether
10 Cross-Defendant may commence any pumping – even for domestic or human use.
11 Given that section 3.5.18.1 of the SPPS lists overdraft as the first criterion to be
12 considered in determining whether new groundwater pumping will cause a
13 "Material Injury," and given that all of NSY yield is allocated by the SPPS to the
14 Stipulating Parties only, it appears unlikely that any new pumping by Cross-
15 Defendant will be approved
- 16 2. Non-Stipulating parties cannot be bound by the agreement of the settling parties.
17 Cross-Defendant is not a signatory to the SPPS. Therefore, the Court should not be
18 pressured to accept the SPPS simple because "over 140 parties" have signed on to it.
- 19 3. The allocations of water production rights for the stipulating parties under the SPPS
20 are free, fixed, permanent and indefinite. The permanent allocations change pro rata
21 only if the Court revises the total NSY seventeen (17) years from now. By contrast,
22 there are no provisions in the SPPS to allocate any of the NSY yield to the non-
23 stipulating parties.
- 24 4. The proposed settlement cannot be within the range of reasonableness for
25 preliminary approval as it severely prejudices non-settling parties and deprives them
26 of correlative rights to the NSY free of replacement assessment.
27

- 1 5. The proposed settlement attempts to establish a 3 acre feet per year allocation for
2 the Wood Class members as a standard that is going to bind all the non-settling
3 parties, a type of settlement which the Court has already denied approval of in 2012.
- 4 6. The Court cannot approve a settlement with a permanent allocation of groundwater
5 upon an agreement of some of the parties, but not all of the parties.
- 6 7. A settlement cannot bind or prejudice the interests of a non-settling party. To be
7 binding, a settlement must be signed by both the party seeking enforcement and the
8 party against whom it is to be enforced. A court may not enforce a settlement
9 agreement against a party who did not participate in creation of the agreement nor
10 sign the agreement.
- 11 8. The SPPS allocates the entire NSY (82,300 AFY) on a fixed, permanent, and
12 guaranteed priority basis to the exclusion of others.
- 13 9. The water allocated is free of replacement assessment while, with the possible
14 exception for domestic use, others must pay the replacement assessment.
- 15 10. The proposed settlement imposes burdensome, uncertain, and expensive conditions
16 on others before others may be allowed to commence any pumping, even for
17 domestic and human use. No similar limitations are placed on the stipulating
18 parties.
- 19 11. The Basin's principal water importer, AVEK, has represented that water allocations
20 from the State Water projects are being severely curtailed due to California's
21 drought conditions. Thus, if others are denied access to the NSY, it appears likely
22 that others' pumping applications will be denied.
- 23 12. Compared to the Wood Class, the right of others to domestic use and human use is
24 contingent, uncertain, and unreasonably limited.
- 25 13. The SPPS denies non-stipulating parties their rights to share in the NSY free of
26 replacement assessment.
- 27
- 28

- 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
14. The SPPS unlawfully and erroneously provides, all by agreement and without a hearing affording due process violating both the State and Federal Constitutions, that the unexercised rights of the others should be modified and that the SPPS is consistent with the subordination provisions in the surface water decision of *In Re Waters of Long Valley Creek Stream System*.
 15. The members of the Wood Class are unfairly and inequitably allocated a domestic use priority of 1.2 AFY and up to 3 AFY allocation for use on overlying land, both of which allocations are free of replacement assessment, with no metering obligations, no reporting obligations, no administrative assessments on 1.8 AFY, and a priority right under Water Code Section 106.
 16. The SPPS is inconsistent with Water Code Sections 106 and 106.3.
 17. As an overlying landowner owning present rights to future use of water, Cross-Defendant is entitled to notice and judicial determination of such rights and an opportunity to challenge any interference with these rights.
 18. This Court lacks jurisdiction, including subject matter jurisdiction, for numerous reasons, including, without being limited to, that not all parties have been joined, for reasons and grounds including, but not limited to, the “McCarran Act”, the need to join necessary and indispensable parties, and the lack of a viable “*in rem*” proceeding, among others.
 19. The SPPS violates Cross-Defendant’s present exercised water right as an overlying landowner as well as future and prospective unexercised overlying water right in groundwater which are Constitutionally based and Constitutionally protected. An overlying right is not predicated on past use, nor on the time a person commences pumping, but solely on the owner’s current reasonable and beneficial need for water.

- 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
20. Cross-Defendant's overlying water right may not be impaired, altered or burdened absent a finding of unreasonable use.
 21. The SPPS permanently allocates the entire NSY to the stipulating parties in derogation of others' water rights.
 22. The Physical Solution does not reasonably allocate water rights, violates the common law, violates Article X section 2 of the California Constitution and sections 106 and 106.3 of the Water Code.
 23. The SPPS seeks to allocate 99.8% of the water supply and to bind all parties for long-term management of the Basin.
 24. The California Constitution and case law preclude a judicial finding of a right to recapture native groundwater return flow.
 25. Water rights, including appropriative water rights and groundwater rights are considered rights in real property. Parties' real property rights are impaired by retroactively applying a finding of overdraft, thereby effectively eliminating those property rights without a fair hearing on those issues. This Court may not impair a vested property right without due process of law.
 26. Objection is made to the proposed physical solution because there are no studies as to the quality of water in the sub-aquifer, both as to treating and blending of water, and as to both health and property protection standards. For example, disinfection using chloramine, chlorine, ultraviolet radiation and other treatment/disinfectant in manners and quantities differing between subaquifers render an acre foot of allocation to one user less beneficial than to another.
 27. Cross-Defendant only appeared in this case a little more than six (6) months ago, there is literally 9,600 different documents on the court docket relating to this matter, Cross-Defendants has not had sufficient time to review the entire case.

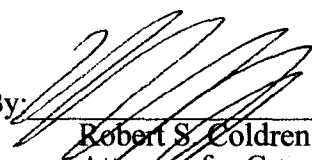
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cross-Defendant objects that this constitutes a basic violation of its due process rights under the State of California and United States constitutions.

- 28. Cross-Defendant asserts numerous claims and rights to produce groundwater from the Basin, including, without being limited to, the right to produce amounts of water for reasonable and beneficial use on its overlying property without assessments, not to have its current pumping limited or reduced, and to not be subject to basin-wide management system through a watermaster funded by assessments levied on all groundwater users in the Basin, and not to have to pay for groundwater pumped from its well.
- 29. The proposed settlement and physical solution constitute a “taking”, both regulatory and physical, under the Federal and State constitutions.
- 30. Cross-Defendant hereby joins in the written statements of objections and assertion of claims and rights to produce groundwater filed by other non-settling parties.

Dated: April 7, 2015

COLDREN LAW OFFICES

By: 

Robert S. Coldren
Attorney for Cross-Defendant,
MILANA VII, LLC, dba Rosamond Mobile
Home Park