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10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 Coordination Proceeding  
Special Title (Rule 1550(b))  
13  
14 ANTELOPE VALLEY GROUNDWATER  
CASES  
Included Actions:  
15  
16 Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.  
Superior Court of California County of Los Angeles,  
17 Case No. BC 325 201  
18 Los Angeles County Waterworks District No. 40 v.  
Diamond Farming Co.  
19 Superior Court of California, County of Kern,  
Case No. S-1500-CV-254-348  
20  
21 Wm. Bolthouse Farms, Inc. v. City of Lancaster  
Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
22 Superior Court of California, County of Riverside,  
consolidated Actions, Case Nos. RIC 353 840, RIC 344  
23 436, RIC 344 668  
24  
25 AND RELATED CROSS-ACTIONS  
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Judicial Council Coordination  
Proceeding No. 4408

**RESPONSE OF STATE OF  
CALIFORNIA, SANTA  
MONICA MOUNTAINS  
CONSERVANCY AND STATE  
OF CALIFORNIA 50<sup>TH</sup>  
DISTRICT AGRICULTURAL  
ASSOCIATION TO UNITED  
STATES' MOTION FOR  
JUDGMENT ON THE  
PLEADINGS**

1 Defendants State of California, the Santa Monica Mountains Conservancy, and the State of  
2 California 50th District Agricultural Association ("State defendants") hereby respond to the Motion  
3 for Judgment on the Pleadings filed in this action by the United States on or about August 18, 2006.  
4 As explained below, the State defendants agree with the United States that the present action is not  
5 at this time a complete stream adjudication for purposes of the McCarran Amendment (43 U.S.C.  
6 § 666) because not all of the owners of water rights in the streams which supply a substantial portion  
7 of the native supply of the groundwater basin have been joined. The State defendants do not,  
8 however, take the position that all adjudications of groundwater basins must include interconnected  
9 surface streams. Such a determination should be made on a case-by-case basis depending on the  
10 facts, including the nature of any interconnections between the surface water and the groundwater.

11 **I. THE MCCARRAN AMENDMENT APPLIES TO AN ADJUDICATION**  
12 **OF THE RIGHTS TO THE USE OF WATER**  
13 **"OF A RIVER SYSTEM OR OTHER SOURCE."**

14 The McCarran Amendment is a waiver of sovereign immunity by which Congress consents  
15 to the joinder of the United States as a defendant "in any suit (1) for the adjudication of rights to  
16 the use of water of a river system or other source, or (2) for the administration of such rights,  
17 where it appears that the United States is . . . a necessary party to such suit." (43 U.S.C. § 666.)  
18 The question is whether the present action is a sufficiently complete adjudication of the water  
19 rights to a river system or other source to come within the scope of the waiver and confer  
20 jurisdiction over the United States on this court. At this point in time, because owners of water  
21 rights to the surface streams that are a substantial source of water to the groundwater basin have  
22 not been named or joined, the State defendants contend that it is not.

22 **A. The McCarran Amendment Applies to a Complete Adjudication of Water Rights,**  
23 **Including the Rights of the Parties *Inter Se*.**

24 It is well established that the McCarran Amendment applies only to *complete* adjudications  
25 of the water rights of a stream system or other source. All the water rights holders must be  
26 joined, and their rights must be determined among themselves. (*California v. Rank* (9<sup>th</sup> Cir.  
27 1963) 293 F.2d 340, 347, rev'd on other grounds sub nom *Dugan v. Rank* (1963) 372 U.S. 609;  
28

1 *United States v. Oregon* (9<sup>th</sup> Cir. 1994) 44 F.3d 758, 769 [adjudication "must include the  
2 undetermined claims of all parties with an interest in the relevant water source".])

3 **B. Some, But Not All, of the Cases Involving a River System Have Included**  
4 **Interconnected Groundwater.**

5 The McCarran Amendment refers to adjudication of rights to use water from a "river system  
6 or other source." Nothing in the cross-complaint by the Municipal Purveyors refers to the waters  
7 of the Antelope Valley as a "river system." It is more likely that the "groundwater basin" referred  
8 to in the cross-complaint would be considered an "other source."

9 The cases involving adjudications of river systems have varied with respect to the treatment  
10 of interconnected surface and groundwater sources. In some states, surface and groundwater are  
11 adjudicated in the same proceeding (See, *In re the General Adjudication of Rights to the Use of*  
12 *Water from the Snake River Basin Water System* (Idaho, 1988) 115 Idaho 1, 764 P.2d 78; *In re*  
13 *Uintah Basin* (Utah 2006) 133 P.3d 410.) In other states, such as Oregon, at least some  
14 adjudications of river systems encompass only surface water rights. In *United States v. Oregon*,  
15 *supra*, 44 F.3d 758, the Ninth Circuit Court of Appeal held that an Oregon surface water  
16 adjudication was adequate for McCarran Amendment purposes without the joinder of owners of  
17 groundwater rights.

18 In *United States v. Oregon*, the Ninth Circuit held that while groundwater might be  
19 considered an "other source" for the purposes of McCarran Amendment jurisdiction, an Oregon  
20 adjudication of the Klamath River did not need to determine the rights of users "of all  
21 hydrologically-related water sources" (i.e., groundwater). (*Id.* at p. 769.) Noting that some state  
22 water rights regimes allow for different treatment of surface water and groundwater rights, the  
23 court reasoned that "[w]hile the trend has been toward a greater legal recognition of the  
24 connection between ground and surface waters, that recognition is too recent and too incomplete  
25 to infer that Congress intended to require comprehensive stream adjudications under the  
26 McCarran Amendment to include the adjudication of groundwater rights as well as rights to  
27  
28

1 surface water." (*Id.* at pp. 769-770.)<sup>12</sup> In short, the *Oregon* opinion suggests that groundwater  
2 may be included as an "other source" within the meaning of that term in the McCarran  
3 Amendment, but rejected a rule that adjudication of a river system *must* always include  
4 hydrologically-related groundwater.

5 **C. A Groundwater Adjudication Should Include Surface Flows that**  
6 **Substantially Affect the Groundwater.**

7 The United States points out that the *Oregon* ruling that a surface water adjudication need  
8 not always include all "hydrologically-related" groundwater does not resolve the question of  
9 whether hydrologically-related surface water must be included in this case. (United States  
10 Motion, p. 7.) It argues that the *Oregon* case was different because surface water may or may not  
11 be affected by nearby or underlying groundwater, but groundwater is dependent upon surface  
12 water. (*Ibid.*) This suggests that the pertinent inquiry for determining whether interconnected  
13 water needs to be included in an adjudication is the extent to which the interconnected water will  
14 affect the water being adjudicated. A groundwater adjudication should include surface water  
15 flows that substantially affect the amount or quality of the groundwater. The degree of  
16 interconnectedness is a question of fact, which should be determined on a case-by-case basis.

17 The McCarran Amendment was designed to permit the participation of the United States in  
18 state water rights adjudications, and also to protect it from recurring water rights litigation.  
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20  
21 1. The situation in California is perhaps even more complex than in Oregon. The State  
22 Water Resources Control Board has the authority to conduct "statutory adjudications," pursuant to  
23 Water Code Section 2500, but such authority extends only to the adjudication of surface water, not  
24 percolating groundwater. (*Ibid.*) The United States has participated in such surface-water stream  
25 adjudications. (*In re Determination of Rights to Water of Hallett Creek Stream System* (1988) 44  
26 Cal.3d 448.) However, the California courts also have jurisdiction to conduct water rights  
27 adjudications, and are not limited to surface water, but may adjudicate both surface and groundwater.  
28 (See, e.g., *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224.) It is not clear which  
of California's systems of "general adjudication" was in the mind of Congress when it passed the  
McCarran Amendment. If the McCarran Amendment required that all stream adjudications include  
associated groundwater, the California statutory adjudication process for surface streams would not  
allow joinder of the United States, contrary to historic practice.

1 (*United States v. Oregon, supra*, 44 F.3d at p. 768.) "The clear federal policy evinced by that  
2 legislation is the avoidance of piecemeal adjudication of water rights in a river system."  
3 (*Colorado River Water Conservation District v. United States* (1976) 424 U.S. 800, 819.) Unless  
4 the groundwater adjudication includes upstream sources of water that flow into the groundwater  
5 basin, the United States might be forced to bring or participate in subsequent suits against those  
6 whose upstream diversions would affect its water rights. (Cf., *In re General Adjudication of All*  
7 *Rights to Use Water in Gila River System and Source* (Ariz. 1999) 989 P.2d 739, 745-751  
8 [federal reserved right context].)<sup>2f</sup> In *United States v. District Court in and for the County of*  
9 *Eagle* (1971) 401 U.S. 520, the United States Supreme Court quoted Senator McCarran,  
10 Chairman of the Committee reporting on the bill, stating that the purpose of the bill was to allow  
11 the United States to be joined in a suit where it was necessary to adjudicate all the rights on a  
12 particular stream, because "unless all of the parties owning or in the process of acquiring water  
13 rights on a particular stream can be joined as parties defendant, any subsequent decree would be  
14 of little value." (*Ibid.* at p. 282, quoting S. Rep. No. 755, 82<sup>nd</sup> Cong., 1<sup>st</sup> Sess, 9.)

15 **II. THE SURFACE STREAMS THAT FLOW INTO AND RECHARGE**  
16 **THE ANTELOPE VALLEY GROUNDWATER BASIN SHOULD**  
17 **BE INCLUDED IN THIS ADJUDICATION**

18 In order to constitute a complete adjudication for purposes of the McCarran Amendment, this  
19 adjudication should include the streams that are a substantial source of recharge to the native  
20 groundwater of the Antelope Valley Groundwater Basin. The Department of Water Resources'  
21 Bulletin 118, California's Groundwater, identifies the sources of recharge to the Antelope Valley  
22 Groundwater Basin as follows:

23 Recharge to the basin is primarily accomplished by perennial runoff from the  
24 surrounding mountains and hills. Most recharge occurs at the foot of the  
25 mountains and hills by percolation through the head of alluvial fan systems.

26 2. The burden of joining many additional parties might be partially alleviated by the use of  
27 certain classes of water rights holders. In *City of Chino v. Superior Court* (1967) 255 Cal.App.2d  
28 747, the court indicated that use of classes to represent certain groups of necessary parties to a  
general adjudication may satisfy the requirements of the McCarran Amendment, but there can be no  
class representation of those who claim prescriptive or appropriative rights, since such claims depend  
on individual circumstances. (*Id.* at 760.)

1 The Big Rock and Little Rock Creeks, in the southern part of the basin,  
2 contribute about 80 percent of runoff into the basin (Durbin 1978). Other  
3 minor recharge is from return of irrigation water and septic system effluent  
4 (Duell 1987).

5 ([www.groundwater.water.ca.gov/bulletin118/basin\\_desc/basins/pdfs\\_desc/6-44.pdf](http://www.groundwater.water.ca.gov/bulletin118/basin_desc/basins/pdfs_desc/6-44.pdf)) [as of  
6 August 31, 2006].)

7 Given that runoff from the mountains and hills surrounding the groundwater basin is the  
8 primary source of natural recharge to the Antelope Valley Groundwater Basin, the streams  
9 running into the basin must be included at the outset of the adjudication. Otherwise, there is a risk  
10 that later diversions from those upstream sources will diminish the amount of water reaching and  
11 recharging the groundwater basin, possibly requiring additional and subsequent lawsuits to protect  
12 the rights of the groundwater users, including the United States and the State defendants.

13 The State defendants disagree with the United States that the groundwater basin is "totally  
14 dependant" on the surface water emanating from within the watershed. (United States' Motion,  
15 p. 7.) The pleadings assert that a considerable amount of State Water Project Water is imported  
16 and may contribute to the replenishment of the groundwater basin, and will likely be part of any  
17 physical solution. (Cross-complaint, ¶¶ 26-28.) Nonetheless, the inflow of streams from the  
18 watershed area (whether on the surface or by subsurface flow) is the primary source of the native  
19 water of the basin, and the sources of the inflow should be included in the adjudication.

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III. CONCLUSION

The State defendants do not advocate a rule that groundwater adjudications must always include the watershed areas which surround the groundwater basin. The interconnectedness of the groundwater and surface water should be determined on a case-by-case basis. However, in this case, where the surface water streams constitute a significant portion of the natural recharge of the native groundwater in the basin, the McCarran Amendment requires the adjudication of those streams if the United States is to remain a party to the action.

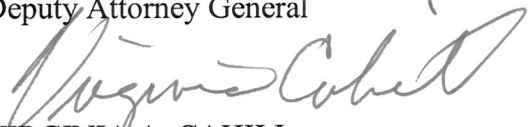
August 31, 2006.

Respectfully submitted,

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DECLARATION OF SERVICE

CASE:           **ANTELOPE VALLEY GROUNDWATER CASES,  
LOS ANGELES COUNTY SUPERIOR COURT  
JUDICIAL COUNCIL COORDINATED PROCEEDINGS NO. 4408**

I, declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On August 31, 2006, I served the **RESPONSE OF STATE OF CALIFORNIA, SANTA MONICA MOUNTAINS CONSERVANCY AND STATE OF CALIFORNIA 50<sup>TH</sup> DISTRICT AGRICULTURAL ASSOCIATION TO UNITED STATES' MOTION FOR JUDGMENT ON THE PLEADINGS**

  X   Posting the document(s) listed above to the Santa Clara County Superior Court web site in regard to the Antelope Valley Groundwater matter on August 31, 2006

  X   by placing a true copy of the document(s) listed above in a sealed envelope with postage thereon fully prepaid using the overnight courier, Golden State Overnight Courier Service, addressed as follows:

**(served original via over night courier to Presiding Judge on August 31, 2006)**

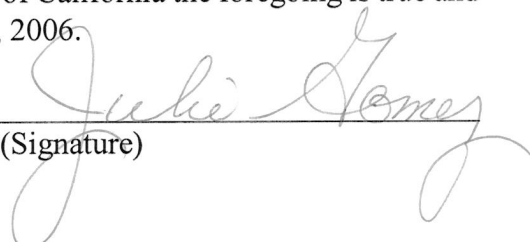
Presiding Judge of the Superior Court of California, County of Los Angeles  
County Courthouse  
111 North Hill Street  
Los Angeles, CA 90012-3014

Chair, Judicial Council of California  
Administrative office of the Courts  
Attn: Appellate and Trial Court Judicial Services (Civil Case Coordination)  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Honorable Jack Komar  
Santa Clara County Superior Court  
191 North First Street, Department 17C  
San Jose, Ca 95113

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 31, 2006.

\_\_\_\_\_  
Declarant  
Julie Gomez

  
\_\_\_\_\_  
(Signature)