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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES  
10

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

12 ANTELOPE VALLEY GROUNDWATER CASES

13 Included Actions:

14 Los Angeles County Waterworks District No. 40 v.  
15 Diamond Farming Co.  
Superior Court of California, County of Los Angeles,  
16 Case No. BC 325 201

17 Los Angeles County Waterworks District No. 40 v.  
18 Diamond Farming Co.  
Superior Court of California, County of Kern,  
19 Case No. S-1500-CV-254-348

20 Wm. Bolthouse Farms, Inc. v. City of Lancaster  
21 Diamond Farming Co. v. City of Lancaster  
Diamond Farming Co. v. Palmdale Water Dist.  
Superior Court of California, County of Riverside,  
22 Case Nos. RIC 353 840, RIC 344 436, RIC 344 668  
(Consolidated Actions)

Judicial Council Coordination  
Proceeding No. 4408

Assigned to The Honorable  
Jack Komar

(Errata—Footnotes Corrected)  
U.S. BORAX'S CASE  
MANAGEMENT  
CONFERENCE STATEMENT  
RE: NECESSARY PARTIES  
AND NEXT TRIAL PHASE

Date: November 25, 2008  
Time: 10:30 a.m.  
Dept: 17C

23  
24 In the prior two phases of trial, the Court has (1) established the jurisdictional boundary and  
25 (2) determined that there are not any distinct groundwater sub basins within the valley that do not  
26 have hydrologic connection to other parts of the aquifer underlying the valley.<sup>1</sup> In its November 6,

27 <sup>1</sup> For most practical purposes, these proceedings resolved the Eighth Cause of Action in the Public Water  
28 Suppliers' First Amended Complaint seeking declaratory relief regarding the boundaries of the basin.

1 2008 Order after Phase II, the Court requested “counsel should address the status of the service of  
2 notices in the two class action proceedings, and the setting for trial of the remaining phases of the  
3 trial.”

4 **I. Service of Notices in the Two Class Action Proceedings**

5 The Court has certified two classes in this adjudication. The first class consists of landowners  
6 who do not pump water—the “non-pumper class.” Based on the Court’s orders, the non-pumper  
7 class is defined as:

8 All private (i.e., non-governmental) persons and entities that own real  
9 property within the Basin, as adjudicated, that are not presently  
10 pumping water on their property<sup>[2]</sup> (“the Class”). The Class includes  
11 the successors-in-interest by way of purchase, gift, inheritance, or  
12 otherwise of such landowners. (9/11/07 Order Certifying Non-  
13 Pumpers.)

14 The Class excludes the defendants herein, any person, firm, trust,  
15 corporation, or other entity in which any defendant has a controlling  
16 interest or which is related to or affiliated with any of the defendants,  
17 and the representatives, heirs, affiliates, successors-in-interest or  
18 assigns of any such excluded party. (9/11/07 Order Certifying Non-  
19 Pumpers.)

20 The Class excludes all persons who only own property(ies) within the  
21 Basin that are connected to and receive water service from a municipal  
22 supplier, public utility, or mutual water company. (5/22/08 Order  
23 Certifying Non-Pumpers.)

24 The Class shall exclude all property(ies) that are listed as ‘improved’  
25 by the Los Angeles County or Kern County Assessor’s office, unless  
26 the owners of such properties declare under penalty of perjury that they  
27 do not pump and have never pumped water on those properties. (9/2/08  
28 Order Certifying Non-Pumpers.)

[A]ll persons who are already participating in this litigation . . . may  
“opt in” to the Class to the extent they otherwise fall within the Class  
definition. (9/2/08 Order Certifying Non-Pumpers.)

The second class consists of landowners who have pumped water—the “small pumper class.” Based  
on the Court’s order, the small pumper class is defined as:

All private (i.e., non-governmental) persons and entities that own real  
property within the Basin, as adjudicated, and that have been pumping  
less than 25 acre-feet per year on their property during any year from

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<sup>2</sup> This order originally required only that such landowners have not pumped in the prior five years, but the  
definition was modified per the Court’s September 2, 2008 order.

1 1946 to the present. The Class excludes the defendants herein, any  
2 person, firm, trust, corporation, or other entity in which any defendant  
3 has a controlling interest or which is related to or affiliated with any of  
4 the defendants, and the representatives, heirs, affiliates, successors-in-  
interest or assigns of any such excluded party. The Class also excludes  
all persons and entities that are shareholders in a mutual water  
company. (9/2/08 Order Certifying Small Pumpers.)

5 These two classes must be properly noticed and joined before any further trial proceedings.

6 In this adjudication, the cross-complainant public water suppliers have requested declaratory  
7 relief and injunctions against the “owners, lessees, or other persons or entities holding or claiming to  
8 hold ownership or possessory interests in real property within the boundaries of the basin.” 1st  
9 Amended Cross-Complaint at ¶ 12. The complaint further alleges that this is to “comprehensively  
10 adjudicate” the rights of all claimants (in part to satisfy the McCarran Act). In the prayer for relief,  
11 the Public Water Suppliers seek to prohibit cross-defendants from pumping any water that may  
12 interfere with the public water suppliers’ alleged rights. *See id.* at 21:27-22:7. In light of these  
13 pleadings, and given the matters that will be decided in the next phase (discussed further below), the  
14 classes and any other known landowners or pumpers are now necessary, and arguably indispensable,  
15 parties for the next trial phase.

16 The Code of Civil Procedure provides that a party is necessary when:

17 (1) in his absence complete relief cannot be accorded among those  
18 already parties or (2) he claims an interest relating to the subject of the  
19 action and is so situated that the disposition of the action in his absence  
20 may (i) as a practical matter impair or impede his ability to protect that  
interest or (ii) leave any of the persons already parties subject to a  
substantial risk of incurring double, multiple, or otherwise inconsistent  
obligations by reason of his claimed interest.

21 Cal. Code Civ. Proc. § 389(a). The two classes, and any other known large landowners or pumpers,  
22 fall within the section 389(a) definition of “necessary” parties to this “comprehensive” adjudication.

23 A trial on prescriptive rights, and the issues contained therein, must have these parties properly  
24 joined. Otherwise, the Court will have to decide:

25 (1) to what extent a judgment rendered in the person’s absence might  
26 be prejudicial to him or those already parties; (2) the extent to which,  
27 by protective provisions in the judgment, by the shaping of relief, or  
28 other measures, the prejudice can be lessened or avoided; (3) whether a  
judgment rendered in the person's absence will be adequate; (4)  
whether the plaintiff or cross-complainant will have an adequate  
remedy if the action is dismissed for nonjoinder.

1 *Id.* at § 389(b). U.S. Borax submits that these factors would heavily weigh in favor of dismissal  
2 without the classes or other known large landowners or pumpers. Such parties are indispensable to  
3 issues involving prescription in a comprehensive adjudication.

4 As a result, assuring proper service and joinder of all necessary parties, including both classes,  
5 is a threshold step that must be accomplished before any further proceedings. Unless and until the  
6 necessary parties have been properly served and joined to this action, U.S. Borax requests that the  
7 Court abstain from proceeding with the next phase of trial. U.S. Borax also reserves the right to seek  
8 a dismissal for failure to join indispensable parties in the event the trial proceeds without the classes  
9 and any other known pumpers or large landowners.

## 10 **II. The Next Phase of Trial**

### 11 *A. Trial on the Cause of Action for Prescription*

12 Expenses in this adjudication have already been excessive. U.S. Borax now anticipates some  
13 of the public water suppliers may advocate to splinter their own first cause of action on prescription  
14 into multiple phases of trial. This request should be rejected. Such a proposal will assure a  
15 multiplicity of expensive and time-consuming trials on what was alleged by the Public Water  
16 Suppliers' as one cause of action for prescription.

17 Specifically, the First Cause of Action alleged by the Public Water Suppliers is for  
18 “Declaratory Relief – Prescriptive Rights.” 1st Amended Cross-Complaint at 14:1. The cause of  
19 action seeks a declaration that the Public Water Suppliers have taken the requisite actions “sufficient  
20 to establish the Public Water Suppliers’ prescriptive rights.” *Id.* at ¶¶ 42, 44. Based on this pleading,  
21 the Court should not entertain a request to conduct a piecemeal series of trials on sub-issues within  
22 that singular cause of action.

23 The relevant law plainly favors judicial efficiency. For example, state law requires that  
24 motions for summary adjudication only address entire causes of action or affirmative defenses. See,  
25 e.g., Cal. Code Civ. Proc. § 437c(f)(1). Allowing multiple trials on sub-issues to resolve only one  
26 cause of action runs afoul of this fundamental principle of California law. Also relevant are the  
27 provisions in the Code of Civil Procedure that strictly outline the conditions for postponing trials. *Id.*  
28 at §§ 594a-596. Holding trial on one sub-issue and then retiring for several months before

1 reconvening for another sub-issue is effectively a postponement. Such a postponement  
2 unquestionably prejudices the cross-defendants—parties that have unwillingly been brought into this  
3 action. The postponement provisions further merit holding the next phase of trial on at least one  
4 entire cause of action, not mini-issues that may have strategic value to only certain parties.

5 Even more specific to the circumstances before the Court in this case, a request to have a trial  
6 on anything less than the entire cause of action is for all practical purposes a motion to bifurcate. The  
7 law authorizes bifurcation when “the convenience of witnesses, the ends of justice, or the economy  
8 and efficiency of handling the litigation would be promoted thereby.” Cal Code Civ. Proc. § 598.  
9 These three factors all militate against separate trials on sub-issues and favor a trial on the entire First  
10 Cause of Action.

11 With respect to the first factor—the convenience of witnesses—there will be both percipient  
12 and expert testimony regarding pumping that is relevant to all elements of prescription. If the cause  
13 of action is broken into sub-issues, all of these witnesses will likely be required to come to court and  
14 testify more than once. Regarding expert witnesses, that will increase the cost of this adjudication  
15 substantially by effectively requiring at least two rounds of expert depositions and two trials, instead  
16 of one.

17 With respect to the second factor—the ends of justice—the determination of sub-issues  
18 separately will substantially prejudice the parties. For example, if the Public Water Suppliers  
19 proceeded only to establish a low safe yield, but did not have to establish whether they have obtained  
20 prescriptive rights, the cross-defendants will have been forced to spend an extraordinary amount of  
21 money and time, and still will not know whether they have protected their rights, or lost them by  
22 prescription. Such a scenario would substantially prejudice the cross-defendants, particularly in any  
23 settlement negotiations—the ends of justice would not be promoted thereby.

24 With respect to the third and final factor, the economy and efficiency of the litigation, there  
25 can be no question that one trial on one cause of action is more economical and efficient than two or  
26 more trials. Already the expense of this adjudication, brought by the public water suppliers, has been  
27 extortionate. To allow them to dissect their own cause of action into multiple pieces to the prejudice  
28 of the cross-defendants would further be prejudicial.

1 In sum, all factors under the law militate in favor of holding this trial on the entire cause of  
2 action that was alleged by the Public Water Suppliers—declaratory relief to establish prescriptive  
3 rights.

4 B. *Venue*

5 U.S. Borax also wishes to register its position that the next phase of trial should be venued  
6 specifically in the Antelope Valley.

7 For venue purposes, actions are classified as ‘local’ or ‘transitory.’ To  
8 determine whether an action is local or transitory, the court looks to the  
9 ‘main relief’ sought. . . . ‘Local’ actions are those dealing with land or  
certain other local relationships that are deemed to require local  
adjudication, regardless where the defendant resides.

10 Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial, §§ 3:457, 3:459 (The Rutter Group, 2008)  
11 (emphasis in original). The Code of Civil Procedure dictates that such “local” actions should be  
12 situated where the property is located. Cal. Code Civ. Proc. § 392(a)(1). Moreover, in condemnation  
13 proceedings (strongly analogous to a claim of prescription), the venue is specifically dictated as being  
14 where the property is located. Cal. Code Civ. Proc. § 1250.020(a).

15 U.S. Borax recognizes that venue for this action has already been situated in an appropriate  
16 county—Los Angeles—but the county local rules address specific district locations within this large  
17 county. Consistent with the state law, the Local Rules further commend placing this matter in the  
18 Antelope Valley (the East District), where the subject land is located. Local Rule § 2.0(b) authorizes  
19 trial in the district where property is located (in addition to the Central District), and the factors in  
20 locating such proceedings are “for the convenience of witnesses or to otherwise promote the ends of  
21 justice.” Given the likelihood of many landowner witnesses in the next phase, and for the reasons  
22 already stated above, these factors point to the Antelope Valley. The only factor favoring downtown  
23 Los Angeles is the convenience of the attorneys, but that is not a ground for keeping venue there. See  
24 *Lieppman v. Lieber*, 180 Cal. App. 3d 914, 920 (1986).<sup>3</sup> In an adjudication that involves the rights of  
25 virtually every landowner in the Antelope Valley, the trial with respect to those rights should be in  
26 the Antelope Valley.

27 <sup>3</sup> U.S. Borax cautiously abstains from any assertions regarding the convenience of the judge, but does suggest  
28 that given the gravity of the next phase to the parties involved, the Antelope Valley is the appropriate locale.

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Dated: November 21, 2008

EDGAR B. WASHBURN  
WILLIAM M. SLOAN  
MORRISON & FOERSTER LLP

By:           /S/ WILLIAM M. SLOAN            
William M. Sloan  
Attorneys for U.S. BORAX INC.

1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is  
3 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I  
4 am over the age of eighteen years.

5 I further declare that on November 21, 2008, I served a copy of:

6 **(ERRATA – FOOTNOTES CORRECTED) CASE  
7 MANAGEMENT CONFERENCE STATEMENT OF  
8 U.S. BORAX INC.**

9  **BY ELECTRONIC SERVICE** by electronically posting a true copy thereof to Santa Clara County Superior  
10 Court's electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C -  
11 <http://www.scefilings.org>) with respect to Judicial Council Coordination Proceeding No. 4408 (Antelope  
12 Valley Groundwater matter).

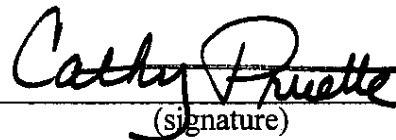
13  **BY U.S. MAIL** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully  
14 prepaid, addressed as follows, for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San  
15 Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices.  
16 I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence  
17 for mailing with the United States Postal Service, and know that in the ordinary course of Morrison & Foerster  
18 LLP's business practice the document(s) described above will be deposited with the United States Postal  
19 Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP with postage thereon fully  
20 prepaid for collection and mailing.

21  **BY FACSIMILE** by sending a true copy from Morrison & Foerster LLP's facsimile transmission telephone  
22 number 415.268.7522 to the fax number(s) set forth below, or as stated on the attached service list. The  
23 transmission was reported as complete and without error. The transmission report was properly issued by the  
24 transmitting facsimile machine. I am readily familiar with Morrison & Foerster LLP's practice for sending  
25 facsimile transmissions, and know that in the ordinary course of Morrison & Foerster LLP's business practice  
26 the document(s) described above will be transmitted by facsimile on the same date that it (they) is (are) placed  
27 at Morrison & Foerster LLP for transmission.

28 I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed at San Francisco, California, November 21, 2008.

Cathy Pruetto  
(typed)

  
(signature)