

1 EDGAR B. WASHBURN (BAR NO. 34038)  
WILLIAM M. SLOAN (BAR NO. 203583)  
2 MORRISON & FOERSTER LLP  
425 Market Street  
3 San Francisco, California 94105-2482  
Telephone: 415.268.7000  
4 Facsimile: 415.268.7522  
Email: wsloan@mofo.com

5 Attorneys for U.S. BORAX INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
CLIFFORD & BROWN  
8 1430 Truxtun Avenue, Suite 900  
Bakersfield, California 93301-5230  
9 Telephone: 661.322.6023  
Facsimile: 661.322.3508  
10 Email: rzimmer@clifford-brownlaw.com

11 Attorneys for BOLTHOUSE PROPERTIES, LLC  
and WM. BOLTHOUSE FARMS, INC.

12 *(List of Counsel Continues on Next Page)*

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF LOS ANGELES

15  
16 Coordination Proceeding  
Special Title (Rule 1550(b))

17 **ANTELOPE VALLEY GROUNDWATER CASES**

18 Included Actions:

19 **Los Angeles County Waterworks District No. 40 v.**  
20 **Diamond Farming Co.**  
Superior Court of California, County of Los Angeles,  
21 Case No. BC 325 201

22 **Los Angeles County Waterworks District No. 40 v.**  
23 **Diamond Farming Co.**  
Superior Court of California, County of Kern,  
24 Case No. S-1500-CV-254-348

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

Judicial Council Coordination  
Proceeding No. 4408

Santa Clara Case No. 1-05-CV-  
049053

Assigned to  
The Honorable Jack Komar

**REPLY BRIEF IN SUPPORT  
OF DEFENDANTS' MOTION  
TO DISMISS PUBLIC  
WATER SUPPLIERS'  
CROSS-COMPLAINT**

Date: June 19, 2009  
Time: 2:00 p.m.  
Dept: 17C

1 *List of Counsel (Continued):*

2 BOB H. JOYCE (BAR NO. 84607)  
3 ANDREW SHEFFIELD (BAR NO. 220735)  
4 KEVIN E. THELEN (BAR NO. 252665)  
5 LAW OFFICES OF LEBEAU THELEN, LLP  
6 5001 East Commercenter Drive, Suite 300  
7 Post Office Box 12092  
8 Bakersfield, California 93389-2092  
9 Telephone: 661.325.8962  
10 Facsimile: 661.325.1127  
11 *Email: bjoyce@lebeauthelen.com*

12 Attorneys for DIAMOND FARMING COMPANY, a  
13 California corporation, CRYSTAL ORGANIC  
14 FARMS, a limited liability company, GRIMMWAY  
15 Enterprises, Inc., and LAPIS LAND COMPANY,  
16 LLC.

17 ROBERT M. DOUGHERTY (BAR NO. 41317)  
18 JESSE T. MORRISON (BAR NO. 247185)  
19 COVINGTON & CROWE, LLP  
20 1131 West Sixth Street, Suite 300  
21 Ontario, California 91762  
22 Telephone: 909.983.9393  
23 Facsimile: 909.391.6762  
24 *Email: jmorrison@covcrowe.com*

25 Attorneys for A.V. UNITED MUTUAL GROUP

26 MICHAEL T. FIFE (BAR NO. 203025)  
27 BRADLEY J. HERREMA (BAR NO. 228976)  
28 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
21 East Carrillo Street  
Santa Barbara, California 93101  
Telephone: 805.963.7000  
Facsimile: 805.965.4333  
*Email: mfife@bhfs.com*

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT ASSOCIATION  
("AGWA")

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The moving Cross-Defendants<sup>1</sup> submit this reply to the opposition filed by the Public Water  
3 Suppliers<sup>2</sup> and the partial joinder and partial opposition filed by Plaintiff Richard Wood to the Motion  
4 to Dismiss the Public Water Suppliers’ Cross-Complaint (“Motion to Dismiss”) for failure to join  
5 indispensable parties. As the opening brief established, this Court should dismiss the Public Water  
6 Suppliers’ Cross-Complaint in its entirety. Alternatively, the Court should order the Public Water  
7 Suppliers to name and serve the Wood and Willis classes as cross-defendants to their lawsuit, as the  
8 Public Water Suppliers have now indicated a willingness to so do. The moving Cross-Defendants are  
9 prepared to accept this alternative of naming and serving the classes in the Public Water Suppliers’  
10 lawsuit for purposes of resolving this motion.

11 **I. INTRODUCTION**

12 The comprehensive adjudication commenced by the Public Water Suppliers has resulted in  
13 thousands of landowners in the Antelope Valley being sued as cross-defendants. From the absentee  
14 small parcel owner who may have unwittingly inherited this lawsuit, to the family farmer that has  
15 brought up generations in the valley, to one of the nation’s strategic air force bases, to a historic  
16 resource company that has employed local citizens for more than a century, the reach of the Public  
17 Water Suppliers’ lawsuit has been all-encompassing. In recognition that these parties were all  
18 necessary—indeed, indispensable—to the comprehensive adjudication of groundwater rights that the  
19 Public Water Suppliers are seeking, the litigation proceeded with all of them named and served as  
20 cross-defendants specifically in the Public Water Suppliers’ action.

21 Relevant here, the Public Water Suppliers’ First Amended Cross-Complaint (“Cross  
22 Complaint”) specifically states that “[t]his cross-complaint seeks a judicial determination of rights to  
23 *all* water within the adjudication area of the Antelope Valley Groundwater Basin.” (First-Amended  
24

---

25 <sup>1</sup> A complete list of the cross-defendants submitting this reply is contained on page three of  
Defendants’ Motion to Dismiss.

26 <sup>2</sup> The Public Water Suppliers include the California Water Service Company, City of Lancaster,  
27 City of Palmdale, Littlerock Creek Irrigation District, Los Angeles County Waterworks District No.  
28 40, Palmdale Water District, Rosamond Community Services District, Palm Ranch Irrigation District,  
and Quartz Hill Water District.

1 Cross-Complaint of Public Water Suppliers for Declaratory and Injunctive Relief and Adjudication of  
2 Water Rights (“Cross-Complaint”) at ¶ 1 (emphasis added).) Moreover, the Cross-Complaint  
3 expressly states that “[t]his is an action to *comprehensively adjudicate the rights of all claimants to*  
4 *the use of a source of water located entirely within California, i.e., the Basin, and for the ongoing*  
5 *administration of such claimants’ rights.*” (*Id.* at ¶ 15 (emphasis added).) The Cross-Complaint also  
6 expressly names as Roe defendants:

7 [O]wners, lessees or other persons or entities holding or claiming to  
8 hold ownership or possessory interests in real property within the  
9 boundaries of the Basin; extract water from the Basin, claim some  
10 right, title or interest to water located within the Basin; or that they  
11 have or assert claims adverse to the Public Water Suppliers rights and  
12 claims.

13 (*Id.* at ¶12.) Despite this express language, the Public Water Suppliers and Richard Wood maintain  
14 that the Wood and Willis classes, which consist of adverse landowners claiming rights to  
15 groundwater within the Basin, are not indispensable parties to the Public Water Suppliers’ lawsuit.  
16 This position is untenable.

17 At the heart of the opposition is the argument that the Wood and Willis classes are not  
18 indispensable parties to the Public Water Suppliers’ lawsuit because the separate class actions have,  
19 by coincidence or luck, been filed and now “coordinated” under California Civil Procedure Code  
20 section 404, and that this coordination is sufficient to comprehensively adjudicate the rights of all  
21 water rights holders within the Basin. As demonstrated below, however, the fact that actions are  
22 coordinated does not alleviate the requirement set forth in California Civil Procedure Code section  
23 389 that all indispensable parties to a lawsuit must be joined.

## 24 **II. COORDINATION IS NOT SUFFICIENT TO SATISFY CALIFORNIA CIVIL 25 PROCEDURE CODE § 389**

26 The fact that the Wood and Willis class actions have been coordinated with the Public Water  
27 Suppliers’ lawsuit as complex coordinated actions collectively referred to as the Antelope Valley  
28 Groundwater Cases has not been lost on the Cross-Defendants. (*See* Motion to Dismiss at 6:20-7:6.)  
However, because the coordination of these actions has not resulted in the joinder of indispensable  
parties to the Public Water Suppliers’ comprehensive adjudication, it does not serve as a replacement  
for the dictates of California Civil Procedure Code section 389.

1           Indeed, both the Court and class counsel for the Willis class have recognized that any member  
2 of the plaintiff classes who chooses to opt out must be *named and served as a cross-defendant to the*  
3 *Public Water Suppliers’ lawsuit*. Specifically, class counsel for the Willis class stated his  
4 understanding with respect to the Willis class as follows:

5           The Court certified a class. The notice went out to the class. Now, we  
6 have a list of members in the Willis class. There are individuals that  
7 have opted out of the Willis class. They are no longer in the Willis  
8 class. . . . I don’t believe the Court has jurisdiction over them until  
9 someone serves them. So I think they have to be served with process.

10 (Excerpt from April 24th Hearing Transcript at 64:14-22 [attached as Ex. A to the Declaration of  
11 William Sloan ISO Defs.’ Reply Brief].) And this Court appropriately stated, in rejecting the Public  
12 Water Suppliers’ argument that there was still jurisdiction over class members who had opted out:

13           To the extent that [opt out class members] do not return the notice and  
14 acknowledge the service, then I think we have to serve them personally,  
15 unfortunately, in order for the Court to have jurisdiction over them. If  
16 they have opted out of the class, they are no longer class members. The  
17 Court does not have jurisdiction over them. All we sent them was a  
18 notice of the class.

19 (*Id.* at 65:14-21.) These conclusions accurately reflect that all members of the Wood and Willis  
20 classes, as well as any other landowners with overlying water rights in the Basin, must be joined as  
21 indispensable parties to the Public Water Suppliers’ “comprehensive adjudication.” If members of  
22 the Wood and Willis classes who choose to opt out must be named and served as cross-defendants to  
23 the Public Water Suppliers’ comprehensive adjudication, it logically follows that the classes  
24 themselves are also indispensable parties and must be named and served as cross-defendants to the  
25 Public Water Suppliers’ lawsuit.

26           The law also does not support somehow using coordination as a surrogate for meeting the  
27 indispensable parties requirement. Under California law, the provisions of the California Civil  
28 Procedure Code generally applicable to civil actions remain controlling on any question not expressly  
covered by the coordination statute (California Civil Procedure Code section 404 et seq.), or the  
applicable California Rules of Court. *See* Cal. Rule of Court 3.504(a). Neither section 404 of the  
California Civil Procedure Code nor any rule contained in the Rules of Court pertaining to  
coordinated actions addresses compulsory joinder of indispensable parties. Therefore, despite the

1 broad discretion given to judges presiding over coordinated actions, California Civil Procedure Code  
2 section 389 still applies in analyzing whether the Wood and Willis classes constitute necessary and  
3 indispensable parties to the Public Water Suppliers' lawsuit.<sup>3</sup>

4 Further demonstrating the insufficiency of coordination to facilitate a general adjudication of  
5 all of the water rights within the Basin, if either of the Wood or Willis classes should dismiss their  
6 class actions with Court approval under California Civil Procedure Code section 581(k), jurisdiction  
7 over the dismissed class members is lost, thus violating the McCarran Amendment's  
8 comprehensiveness requirement and rendering all of this Court's efforts to completely adjudicate all  
9 of the groundwater rights within the Basin a nullity. *See, e.g., Harris v. Billings*, 16 Cal. App. 4th  
10 1396, 1405 (1993) (holding that upon voluntary dismissal, the court is immediately deprived of its  
11 personal and subject matter jurisdiction over the dismissed parties). This potential result further  
12 demonstrates the inadequacy of relying solely on coordination.

13 The Public Water Suppliers argue in the alternative that the Court may order complete  
14 consolidation of all actions included in these coordinated proceedings under California Civil  
15 Procedure Code section 1048(a) if it finds that coordination is insufficient to constitute a "general  
16 adjudication" of all of the groundwater rights in the Basin. (Public Water Suppliers' MPA in Opp. to  
17 Mot. to Dismiss ("Opp.") at 7:6-9:2.) The law on coordination and consolidation is less than a model  
18 of clarity. Nonetheless, as the Matthew Bender treatise cautions, actions pending in different  
19 counties are not eligible for consolidation. Matthew Bender Practice Guide, Pretrial Civil Procedure,  
20 32.08[1]. Here, several of the actions, including the class actions, were commenced in different  
21 counties. The treatise also suggests that consolidation is not available for complex actions, such as  
22 this case. *Id.* Concerns such as this further militate towards simply naming and serving the classes as  
23 cross-defendants under California Civil Procedure Code § 389(a). That the Public Water Suppliers  
24

---

25 <sup>3</sup> Contrary to the suggestion made by Plaintiff Wood's Partial Opposition to [the] Motion to  
26 Dismiss, Rule of Court 3.504(b) is inapplicable here because there is no conflict between Code of  
27 Civil Procedure section 389 and the Rules of Court pertaining to coordinated actions. *See, e.g.,*  
28 *Paterno v. Super. Ct. of Yuba County*, 123 Cal. App. 4th 548, 554-55 (2004) (holding that the rules  
specifically applicable to coordinated actions will only prevail over the general rules of civil  
procedure where there is an irreconcilable conflict between the two).

1 have stated their willingness to name and serve the classes helpfully avoids any of these concerns  
2 regarding the availability and adequacy of coordination or consolidation.

3 **III. AT THE LEAST, THE WOOD AND WILLIS CLASSES SHOULD BE NAMED AS**  
4 **CROSS-DEFENDANTS TO THE PUBLIC WATER SUPPLIERS' LAWSUIT.**

5 The Public Water Suppliers' other arguments are also briefly addressed: First, the argument  
6 that the Court has the power to issue judgments in all of the coordinated actions, and therefore, a  
7 "general adjudication" will result fails to appreciate the fact that any judgment entered prior to  
8 another judgment will necessarily impact the rights of those parties to the later judgment. A  
9 patchwork adjudication comprised of several lawsuits is not the same as one general adjudication  
10 with all necessary parties. For example, if a judgment were entered with respect to the rights of the  
11 named overlying landowner cross-defendants prior to the entry of judgment in the Small Pumper  
12 class action, the rights of the members of the Small Pumper Class would necessarily be affected, and  
13 could be diminished. Certainly, such a judgment would "as a practical matter impair or impede" the  
14 class members' ability to protect their interests. *See* Cal. Civ. Proc. Code § 389(a)(2)(i).

15 Second, the argument that the rights of the Wood and Willis classes are adequately protected  
16 by their own lawsuits similarly fails to recognize the very nature of a comprehensive groundwater  
17 adjudication – i.e., the fact that they are represented in their own lawsuits does not take away the fact  
18 that their rights will be impacted if a judgment is reached regarding the rights of other water rights  
19 holders before their rights are determined. Therefore, the assertion that "the collection of judgments  
20 that will be issued in these coordinated cases will resolve the rights of the *Wood* and *Willis* Classes,  
21 and all other parties in the same manner as if the Public Water Suppliers had sued them directly" is  
22 incorrect. (*See Opp.* at 6:5-7.)

23 Finally, while the moving Cross-Defendants have no doubt that this Court will judiciously  
24 manage these cases to assure fairness to all parties, there remains also the risk that a court of appeal  
25 will not view separate but coordinated cases as affording parties to one case the ability to protect their  
26 respective interests when they are impacted by another case.

27 The Public Water Suppliers' opposition also asserts that the numerous problems identified  
28 with the Wood class are "curable and do not affect the ability to name either of the classes as

1 defendants.” Opp. at 9:25-10:3. Cross-Defendants do not agree that the problems with the class are  
2 necessarily curable, and specifically reserve the right to seek further relief on issues regarding the  
3 classes, but for purposes of this motion would accept the naming and service of both classes as cross-  
4 defendants to the Public Water Suppliers’ lawsuit.

5 **IV. CONCLUSION**

6 From the outset of this litigation, the Public Water Suppliers contemplated that their Cross-  
7 Complaint must include members of the Wood and Willis classes as cross-defendants. (*See* Cross-  
8 Complaint, ¶¶ 1, 12, 15.) Indeed, the Cross-Complaint specifically names as Roe defendants all  
9 “persons or entities holding or claiming to hold ownership or possessory interests in real property  
10 within the boundaries of the Basin.” (*Id.* at ¶ 12.) All members of both the Wood and Willis classes  
11 clearly fall under this definition. Further, the Public Water Suppliers earlier in these proceedings  
12 specifically requested that a defendant class be certified.

13 All parties, including the Public Water Suppliers, agree that all overlying landowners within  
14 the Basin are necessary parties to adjudicating the groundwater rights of the Antelope Valley. As set  
15 forth above, coordination and consolidation are insufficient to protect the rights of all of the parties to  
16 this comprehensive adjudication. Therefore, both the Wood and Willis classes must be named as  
17 cross-defendants by the Public Water Suppliers.

18 The moving Cross-Defendants respectfully request that the Court dismiss the action, as it is  
19 still anticipated that the unresolved class issues will prove incurable. For purposes of resolving this  
20 motion, however, Cross-Defendants accept the Public Water Suppliers’ alternative suggestion and  
21 request the Court order the Public Water Suppliers to properly name and serve the classes as cross-  
22 defendants in the Public Water Suppliers’ lawsuit.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 Dated: June 12, 2009

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

2  
3 By: /s/ William M. Sloan  
4 William M. Sloan

5 Attorneys for U.S. BORAX, INC.

6 RICHARD G. ZIMMER (BAR NO. 107263)  
7 T. MARK SMITH (BAR NO. 162370)  
8 CLIFFORD & BROWN

9 By: /s/ Richard G. Zimmer  
10 Richard G. Zimmer

11 Attorneys for BOLTHOUSE PROPERTIES,  
12 LLC and WM. BOLTHOUSE FARMS, INC.

13 BOB H. JOYCE (BAR NO. 84607)  
14 ANDREW SHEFFIELD (BAR NO. 220735)  
15 KEVIN E. THELEN (BAR NO. 252665)  
16 LAW OFFICES OF LEBEAU THELEN, LLP

17 By: /s/ Bob H. Joyce  
18 Bob H. Joyce

19 Attorneys for DIAMOND FARMING  
20 COMPANY, a California corporation,  
21 CRYSTAL ORGANIC FARMS, a limited  
22 liability company, GRIMMWAY Enterprises,  
23 Inc., and LAPIS LAND COMPANY, LLC.

24 ROBERT M. DOUGHERTY (BAR NO. 41317)  
25 JESSE T. MORRISON (BAR NO. 247185)  
26 COVINGTON & CROWE, LLP

27 By: /s/ Jesse T. Morrison  
28 Jesse T. Morrison

Attorneys for A.V. UNITED MUTUAL  
GROUP

MICHAEL T. FIFE (BAR NO. 203025)  
BRADLEY J. HERREMA (BAR NO. 228976)  
BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Michael T. Fife  
Michael T. Fife

Attorneys for the ANTELOPE VALLEY  
GROUNDWATER AGREEMENT  
ASSOCIATION (“AGWA”)

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

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 June 12, 2009, I served a copy of the attached REPLY BRIEF IN  
6 SUPPORT OF DEFENDANTS' MOTION TO DISMISS PUBLIC WATER SUPPLIERS' CROSS-  
7 COMPLAINT by electronically posting a true copy thereof to Santa Clara County Superior Court's  
8 electronic filing website for complex civil litigation cases (Judge Jack Komar, Dept. 17C —  
9 <http://www.scefiling.org> ) with respect to Judicial Council Coordination Proceeding No. 4408  
10 (Antelope Valley Groundwater matter).

11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct and that this document was executed at San Francisco, California, on June 12,  
13 2009.

14  
15  
16 Catherine L. Berté  
17 (typed)

  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
(signature)